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The Solicitors' Journal and Weekly Reporter.

[REGISTERED AS A NEWSPAPER]

VOL. LXXI. No. 14 [PAGES 257 TO 276]. Saturday, April 2, 1927. PRICE 1s.

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Current Topics.

Detention Without Charge.

IN A CASE at Uxbridge it was reported last week that a sergeant in the R.A.F. was arrested at 4 o'clock one afternoon and not charged until 10 o'clock the next morning. Also, according to his counsel, "He asked for bail, and people came to bail him out, but he was told that he could not be bailed out because he had not been charged." In the event, the magistrates dismissed the charge, allowing the accused's witnesses their expenses. The refusal of bail, however, if it took place, and was on the grounds stated, is difficult to reconcile with s. 45 of the Criminal Justice Act, 1925, passed in accordance with a promise of the Government, after the late Mr. RAWLINSON's report on the case of Major SHEPPARD. Bail was refused on the above ground to Major SHEPPARD, and Mr. RAWLINSON observed (Report, p. 5): "It seems intolerable that there should be no power to grant bail to a man or woman—possibly innocent, as in this case—accused of a crime on Saturday night, until he, or she, has been conveyed to some distant place to be charged on the Monday." And again: "The real principle underlying the whole matter is that every person in custody who can safely be bailed has a right to be bailed at the earliest possible moment." The principle, of course, is that a presumably innocent person is entitled, under the King's peace, to his or her liberty, with such absolute minimum of restraint as is necessary for the purposes of justice. The question of that minimum is all-important, and perhaps might even be taken as an acid test of good government. And we have so much on which to pride ourselves in this respect that we should view with peculiar jealousy any relaxation of our high standard.

Vacating of Deed of Inrolment by Clergyman.

A MOTION OF an extremely novel character was recently made before Mr. Justice EVE, in *In re Clerical Disabilities Act*, 1870, *Ex parte Cowan*, 1921, W.N. 86. The motion was made on behalf of a clergyman who, being desirous of relinquishing his orders had executed a deed of relinquishment pursuant to the Clerical Disabilities Act, 1870. This deed had been duly enrolled in the Central Office of the Supreme Court, and an office copy thereof had been delivered to the bishop of the diocese, pursuant to s. 3 of the above Act, *but the deed had not been recorded in the Diocesan Register*. Now, according to s. 4 of the Clerical Disabilities Act, 1870, "... at the expiration of six months, after an office copy of the inrolment of a deed of relinquishment has been so delivered to a bishop, he or his successor in office shall, on the application of the person executing the deed, cause the deed to be recorded in the registry of the diocese, and thereupon and thenceforth (but not sooner)," certain consequences will enure, the effect of which may be summarised as being that thenceforth the clergyman will be incapable of officiating or acting as such, and will cease to enjoy all the rights, advantages and privileges which previously accrued to him by virtue of his office. Now, in *Ex parte Cowan*, the clergyman eventually altered his mind, and desired to retain his office, and an application was accordingly made to the court to vacate the inrolment. The only previous reported authority on the point is a case decided by Lord ROMILLY as Master of the Rolls, in *Ex parte A Clergyman*, 1872, L.R. 15 Eq. 154. In that case Lord ROMILLY decided that inasmuch as the deed had not been yet recorded in the register of the diocese, the clergyman might avail himself of the *locus pœnitentiæ*, as it were, and have the inrolment vacated. Mr. Justice EVE, following the above authority, accordingly granted the application made in *Ex parte Cowan*, and made an order for the vacating of the deed of inrolment.

The "Unwritten Law."

IT IS REPORTED in a Calcutta case that a Ghurka student, charged with causing grievous bodily harm and attempted murder, pleaded the "unwritten law." This plea was much in evidence in the notorious *Thaw Case* in the United States some years ago, but English barristers, with a wary eye on the Bench, prefer to make their appeals to the juries' emotions in other words. Briefly, the essence of the plea appears to be that, given some fairly plausible reason for feeling sex jealousy, a man (or even sometimes a woman) may find a particular person guilty of an offence against him, sentence that person to death, and carry out the sentence within the four corners of the law. It is, no doubt, unnecessary to state here that this is not the law of England, so largely built up, as it is, in order to abolish private vengeance and obviate the necessity for it. In the words of PARK, J., in *R.* v. *Fisher*, 1837, 8 C. & P. 185, "There would be exceedingly wild work taking place in the world if every man were allowed to judge in his own case. The law of England has laid it down positively and clearly that every killing of another is itself murder, unless the party killing can show by evidence that it is a less offence—there must be an instant provocation to justify a verdict of manslaughter—if the blood has time to cool, it is murder." Thus the jealous husband who kills his wife's lover commits murder unless he finds the pair *in flagrante delicto* and slays at once, when a verdict of manslaughter may be justified. The distinction is well brought out in one of Mr. KIPLING's early stories, in which Private Ortheris "most artistically contrived to suggest" that the sergeant who had just shot

the corporal dead was animated by sudden blind fury instead of brooding all the night over his grievance.

The statutes of Georgia, U.S., apparently give a husband the right to kill another man if he finds that the latter contemplates an intrigue with his wife and the killing is necessary to prevent the intercourse contemplated (*Cloud* v. *State*, 81 Ga. 444). But even in Georgia killing for revenge is forbidden, *cf.* BLECKLEY, C.J., in *Jackson* v. *State*, 91 Ga. 271: "There is no law of this State, or of any other state or country of which we have ever heard, which will justify a husband in going into a field and killing a man at work because he has committed adultery with the slayer's wife."

In the above case the student, found guilty of attempted murder, with a recommendation to mercy, was sentenced to eight years' penal servitude—a sentence which indicates that the plea of the unwritten law was received according to its merits.

Who is a Bank's "Customer"?

MORE THAN ONCE this question has had to be considered by the courts, and, simple though it appears to be, it has been found not very easy to answer. The importance of the question lies when the effect comes to be considered of s. 82 of the Bills of Exchange Act, 1882, which provides that "where a banker in good faith and without negligence receives payment from a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment." If, to oblige a person who has no account with it, a bank cashes his cheques for him, it cannot claim the protection of s. 82, for the reason that the person so obliged is not a "customer." This was decided in *Great Western Railway Co.* v. *London & County Bank*, 1901, A.C. 414. That case tells us who is not a "customer." BAILHACHE, J., in *Ladbroke & Co.* v. *Todd*, 19 Com. Cas. 256, sought to explain what are the characteristics of a customer within the meaning of the section, when he said: "In my opinion a person becomes a customer of a bank when he goes to the bank with money or a cheque and asks to have an account opened in his name, and the bank accepts the money or cheque and is prepared to open an account in the name of that person; after that he is entitled to be called a customer of the bank. I do not think it is necessary that he should have drawn any money or even that he should be in a position to draw money. I think such a person becomes a customer the moment the bank receives the money or cheque and agrees to open an account." It is true that this explanation or definition was *obiter*, but we think it may be accepted as substantially accurate. The question as to the meaning of "customer" in the section was again considered by MACKINNON, J., in the case of *Importers Co., Ltd.* v. *Westminster Bank, Ltd.*, decided by him on the 7th inst. There the defendant bank collected a cheque on behalf of a foreign bank, and the question was whether one bank could in those circumstances be a "customer" of another bank. It was strongly urged that the word "customer" in s. 82 means a private customer, to whom, obviously, it primarily refers, and not another bank for whom the bank claiming the protection of the section has collected a cheque. The judge declined to accept this limitation of the meaning of the term and held that one bank may be the "customer" of another for the purposes of the section.

Directors and their Voting.

Victors Limited (*In liquidation*) v. *Lingard*, 1927, 1 Ch. 323, raised an interesting question of company law. Among the Company's articles was one which provided, *inter alia*, that "No director shall vote as a director in regard to any contract or dealing in which he is interested, and if he shall so vote his vote shall not be counted, nor shall he be reckoned for the purpose of constituting a quorum of directors." In May, 1920, the five directors of the Company entered into a joint and several guarantee with the company's bankers to secure an overdraft to the company up to £25,000, and an undertaking was given to the bank that debentures would not be issued without the bank's consent. In November, 1921, the overdraft then amounting to upwards of £25,000, the directors—in pursuance of a resolution at a directors' meeting, and with the consent of the bank—affixed the company's seal to debentures for £30,000 in favour of the defendants as nominees of the bank, and deposited the same with the bank. The company subsequently went into liquidation and the validity of the debentures was challenged. ROMER, J., held that the issue of debentures to the bank was of indirect benefit to the directors as guarantors of the overdraft, and that they were accordingly "interested" within the meaning of the article of the company referred to above, and that the resolution of the directors and the debentures issued in pursuance of it were invalid. The result is certainly strange, since the directors obtained the overdraft for the company and in its interests, and they could at the time of the loan have issued valid debentures to the bank as security; and the transaction would have been equally valid if the directors had also given a guarantee for the overdraft. The objection to the debentures rested entirely on the fact that they were issued subsequently to, and not concurrently with, the giving of the guarantee; so that when the resolution for issuing the debentures was passed the directors had become subject to a personal liability making them interested parties.

The actual decision, however, in *Victors Limited* v. *Lingard*, upon facts not material to the point of law above referred to, was that, upon the ground of estoppel, the validity of the debentures could not be impeached by the company or its liquidator.

English Acceptor's Liability on Foreign Bill.

WHILE THE reversal last week by the Court of Appeal of ROWLATT, J.'s, decision in *Koechlin et Cie* v. *Kestenbaum Brothers* appears to be fully justified by the explicit language of s. 72 of the Bills of Exchange Act, 1882, the result may create considerable embarrassment to an English acceptor of a foreign bill when called upon for payment. In the case in question, a French bill payable to order was, after its acceptance in London by the defendants, indorsed in Paris by the son of the payee in his own name without indicating in any way that he was the agent of his father. Not unnaturally, the acceptors contested the title of the plaintiffs as indorsees under this somewhat peculiar indorsement and declined to pay. In the action brought against them by the plaintiffs to recover the amount of the bill, evidence was given that by French law a valid indorsement may be made by an agent signing his own name if so authorised by his principal, and that in fact the son had been duly authorised by his father to indorse the bill in question. Notwithstanding this evidence, ROWLATT, J., held that the only contract of the acceptor of a bill payable to order was by ss. 31 and 32 of the Bills of Exchange Act, 1882, to pay the holder if the bill bore by way of indorsement the signature of the payee, that as the bill was lacking in this respect the acceptors had not contracted to pay it, and that s. 72 of the Act, which relates to foreign bills, contained nothing which dispensed with the requirement of English law as to the signature of the payee on the bill itself. The Court of Appeal took a different view, holding that as by French law it appeared that the indorsement through which the plaintiffs claimed was valid and effectual, s. 72 applied and enabled the plaintiffs as holders to claim payment from the acceptors. The case illustrates the perils that may attach to the acceptor in England of a bill drawn in a foreign country, of whose local law he knows nothing, when confronted with an indorsement wholly different in form from what he thinks himself entitled to expect, and regarding the validity of which he can only doubtfully satisfy himself by consulting a lawyer of the country where the indorsement was placed upon the bill.

Property settled under a Power prior to Bankruptcy.

By E. P. HEWITT, K.C., LL.D.

THE case of *Re Mathieson*, 1927, 1 Ch. 283, which came before Mr. Justice ASTBURY and went to the Court of Appeal, raised an interesting question in bankruptcy law. By a post-nuptial settlement, dated the 12th December, 1924—which was not voluntary, being executed in pursuance of ante-nuptial articles—certain property was assigned to trustees upon trust, as to the husband's trust fund, during the joint lives of the husband and wife to pay the income to the wife for her separate use without power of anticipation, and after the death of the wife (if the husband survived) to pay the income to him for the residue of his life. Subject as above, the husband's trust fund, after the husband's death, was to be divided into moieties A and B. Moiety A, after her husband's death, was to be held in trust for the wife for life for her separate use without power of anticipation, and after her death for the children of the marriage, and in default of children upon the trusts of moiety B; and as to moiety B, the same was to be held upon such trusts as the husband should by deed or will appoint, and subject thereto upon certain trusts for the husband's issue by a former marriage, and in default of issue attaining a vested interest, in trust for the husband absolutely.

By a deed poll, dated the 15th January, 1925, the husband exercised the general power of appointment given to him by the post-nuptial settlement, by directing that if there should be no child of his present marriage who should attain a vested interest, the husband's trust fund should be held (after the husband's death) in trust for the wife absolutely.

There had been no issue of the marriage.

On the 7th May, 1925—that is, less than four months after the execution of the deed of appointment—the husband committed an act of bankruptcy by non-compliance with a bankruptcy notice, and on the 29th May a petition in bankruptcy was presented. On the 5th August, 1925, a receiving order was made; on the 26th there was an adjudication, and on the 28th a trustee in the bankruptcy was appointed. In June, 1926, the trustee issued a notice of motion for a declaration that under s. 42 of the Bankruptcy Act, 1914, the deed poll of appointment, including the settlement thereby made, was void against the trustee in bankruptcy.

By s. 42 of the Act, "any settlement of property" (not being a settlement made before and in contemplation of marriage or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement by a man of property acquired in right of his wife) is to be "void against the trustee," if the settlor becomes bankrupt within two years after the date of the settlement, and if the settlor becomes bankrupt within ten years the settlement is to be void unless it is shown that the settlor could at the time pay his debts without the aid of the property settled. By sub-s. (4) the term "settlement" as used in the section, is to include "any conveyance or transfer of property." In the general definition clause (s. 167) it is provided that the word "property" in the Act is to include (*inter alia*) "every description of property, real or personal," and "every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as above defined."

It has, further, to be borne in mind that under s. 28, the property of the bankrupt divisible amongst his creditors, includes—"the capacity to exercise all such powers . . . over property as might be exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge, except the right of nomination to an ecclesiastical benefice." By s. 22, the debtor must execute such instruments and do such acts and things in relation to his property as may be reasonably required; and, if adjudged bankrupt, he is to "aid to the utmost of his power in the realisation of his property and the distribution of the proceeds among his creditors."

The question upon which the application of the trustee in bankruptcy depended was whether the deed of appointment of the 15th January, 1925, was a "settlement" within the meaning of s. 42 of the Act. It was argued on behalf of the defendant that although the expression "settlement," as used in s. 42, was very comprehensive and included any conveyance or transfer of property, nevertheless it must, to be within the section, be a settlement of "property." The section—according to the argument—refers to some property or interest in property, and a power exercisable over property is essentially different from property, being neither property nor an interest in property.

The case of *Ex parte Gilchrist*, 17 Q.B.D. 521, was relied upon. In that case the bankrupt was a married woman, who had been carrying on a trade separately from her husband. By the settlement executed upon the bankrupt's marriage, she had conveyed certain property to a trustee upon trust for herself for life for her separate use without power of anticipation, and after her death upon such trusts as she should by deed or will appoint, and subject thereto upon trust for her children as therein mentioned. The trustee in the bankruptcy called upon the bankrupt to execute an appointment in his favour under the power contained in the settlement; this demand being made under s. 24 of the Bankruptcy Act, 1883, which corresponds to s. 22 of the Act of 1914. The Married Women's Property Act, 1882, s. 1 (5), provides that "every married woman carrying on a trade separately from her husband shall, *in respect of her separate property*, be subject to the bankruptcy laws in the same way as if she were a *feme sole*." The bankrupt refused to comply with the request of the trustee in bankruptcy by making an appointment; and the Court of Appeal decided that she could not be compelled to exercise the power. A married woman is only subject to the bankruptcy law "in respect of her separate property," and a power of appointment is not in itself property.

It is not immaterial to observe, however, having regard to the facts in *Re Mathieson*, that Lord ESHER, M.R., and BOWEN, L.J., in *Ex parte Gilchrist*, lay stress on the fact that the power was an "*unexercised power*."

Re Guedalla, 1905, 2 Ch. 331, was also cited. In that case a testator by his will exercised a general power of appointment and died insolvent. By thus exercising the power he had made the property to which the power related assets for the payment of his debts. Between the date of his will and his death, however, he had become bankrupt, and the question was whether the property which had thus become assets belonged to the trustee in the bankruptcy, or to the executor for the benefit of the creditors who had become such since the bankruptcy. It was held that the executor was entitled. In *Goatley* v. *Jones*, 1909, 1 Ch. 557 (in which case a general power of appointment was exercisable by a husband and wife over certain real estate, and an order for costs in respect of certain proceedings had been made against the husband and wife, the order against the wife being limited in the usual way), it was held that the land over which the power of appointment was exercisable could not be taken in execution under an *elegit*, the property subject to the power being in no sense the wife's "separate estate."

In *Re Mathieson*, Mr. Justice ASTBURY held that the deed of appointment was a settlement within s. 42 of the Bankruptcy Act, and was therefore invalid against the trustee. This decision was reversed by the Court of Appeal, who held that the section had no application.

It may be pointed out, however, in support of the view adopted by Mr. Justice ASTBURY, that the fact relied upon by the respondent's counsel in resisting the trustee's application—namely the essential distinction between property and power—would seem hardly sufficient to determine the question in dispute. What is made void under s. 42 is a "settlement

of property," executed under certain conditions. The fact that the word "property" as used in the section does not include a power would seem for present purposes to be immaterial. It is not suggested that the deed of appointment was a "settlement of a power," but that it was a settlement of property by means of a power. The deed of appointment was an instrument by which property was assured; and it is difficult to see why it should make any difference in determining the question whether it is a settlement or not that the assurance was effected by virtue of a power, instead of by virtue of an estate already in the settlor. Upon the point here referred to, the case of *Ex parte Gilchrist* appears to be irrelevant. In that case there had been no settlement; there was a power which had not been exercised, and the fact that it had not been exercised was drawn special attention to by the Court.

The point here raised is mentioned in the latter part of the judgment of SARGANT, L.J.: "The next question here," said the Lord Justice, "is whether the 'property,' the settlement of which is avoided by s. 42, includes property over which the bankrupt had a general power of appointment . . . It is, I think, clear from the language of s. 42 (1) that the property there referred to must be property which, apart from the settlement, would be available for payment of the bankrupt's debts. But this consideration does not exclude property over which the bankrupt had a general power of appointment only . . . On the other hand, however, the concluding words of s. 42 (1) as to 'the interest of the settlor in such property' . . . seem to me to imply that the property is property in which the bankrupt had an estate or interest in the ordinary sense, and does not include property over which he merely had a power, however extensive."

Upon this passage it may be observed that the words of s. 42 (1) referred to by the Lord Justice: "the interest of the settlor in such property"—might not unreasonably be read as if the words "if any" were inserted after the word "interest." It is interesting to notice that SARGANT, L.J. concludes his judgment by saying that he "can see no logical reason why property over which a bankrupt has had a general power which he has exercised by way of settlement should not have been put on the same footing as property which he owned in the ordinary way. But . . . it may be that this is a *casus omissus*."

Private Street Works.

I.

BY ALEXANDER MACMORRAN M.A., K.C.

THE law relating to the making up and taking over of private streets differs according as the proceedings are taken under the Public Health Act, 1875, s. 150, or under the Private Street Works Act, 1892, where that Act has been adopted. And the law applicable to the Metropolis differs from that under either of the Acts above mentioned. It is necessary, therefore, to deal separately with the procedure under the different Acts.

It must be borne in mind, however, that the notes which follow do not profess to deal in detail with the many questions which have arisen under one or another of these Acts. The space at disposal does not permit of the notice of more than the more important of the points which have to be considered by those to whom is entrusted the administration of the law bearing on this important subject.

Taking first, then, the procedure under the Public Health Act, 1875, s. 150, it will be found that it applies only in an urban district. In a rural district the council may obtain urban powers under s. 150 by an order of the Ministry of Health under s. 276.

Many such orders have been made from time to time, but the practice of the Local Government Board which has been followed by that of their successors, the Ministry of Health, has been to grant urban powers for specified streets and not for the district or contributory place as a whole. It was, moreover, the practice to limit the order in any one case to works other than sewering. It is not easy to assign a reason for this, for s. 15 of the Act only requires a local authority to cause to be made such sewers as may be necessary for effectually draining their district, and this duty may be fulfilled by proceedings under s. 150. It is understood now that this rule, if it ever were a rule, has been relaxed in recent cases in regard to streets in some part of a rural district which is urban in character, or where there are some special circumstances which make it desirable or just that sewers should be provided at the expense of the frontagers.

Subject to the foregoing observations, s. 150 applies in terms to any street within an urban district not being a highway repairable by the inhabitants at large, and the first point to be considered is what is meant by a "street." Now the Act contains in s. 4 a definition of the expression "street." It is there provided that "street" includes any highway and any public bridge not being a county bridge, and any road, lane, footway, square, court, alley or passage, whether a thoroughfare or not. It has often been held that a definition of this kind does not necessarily exclude the natural and ordinary sense in which the word is used, and in at least one case—*Maude* v. *Baildon Local Board*, 10 Q.B.D. 394—it was decided that it was a question of fact for the justices to determine whether or not a road was a street within the meaning of s. 150, and that they were not bound to find as a matter of law that it was a street by reason of the terms of the definition in s. 4. But this decision has not been followed in later cases, and it is now well settled that the word "street" as used in s. 150 has the extended meaning given to it by the interpretation clause. (Among the later decisions reference may be made to *Fenwick* v. *Croydon R.S.A.*, 1891, 2 Q.B. 216.) The section applies therefore to everything which can be called a street as defined by s. 4, without regard to whether there are buildings in the street which would give it the character of a street in the ordinary acceptation of that term. But the section applies only to such streets as are not highways repairable by the inhabitants at large. In the course of these notes it has already been pointed out that a highway is repairable by the inhabitants at large if it were dedicated to public use before the passing of the Highway Act, 1835, unless, indeed, it were repairable by some person or body by prescription, *ratione tenuræ*, or *ratione clausuræ*. Where, therefore, the question arises as to whether a street is a highway repairable by the inhabitants at large, it becomes important to ascertain whether it was in existence as a highway before 1835. In many cases it is impossible to find evidence as to the state of things before 1835, and it is usual, in order to overcome this difficulty, to show that the street was in existence before 1835, and that it has been used as a highway as far back as living memory will go. In order to prove the existence of the street before 1835 reliance is generally made on old maps and plans and the like, and the admissibility of these depends to a large extent, if not wholly, upon whether the person who made them had special knowledge of the locality or had some special duty to discharge in the making of such maps. See the judgments in *Attorney-General* v. *Horner*, 1913, 2 Ch. 140; *Stoney* v. *Eastbourne R.D.C.*, 95 L.J. Ch. 312. It will be observed that in the case of a highway which has come into existence since 1835 no question can arise, for such highway is not repairable, speaking generally, by the highway authority, and, as was pointed out by JESSEL, M.R., in *Taylor* v. *Corporation of Oldham*, 4 Ch. D. 395, the word "street" as used in s. 150 clearly extends to places which are not highways at all but are in all respects private and over which the public have no right. The section applies to any street as above defined which is not sewered, levelled, paved, metalled, flagged, channelled and made good,

or is not lighted to the satisfaction of the urban authority. It will be necessary later to consider the effect of this description. But, leaving that for the moment, the urban authority is empowered by the section, by notice addressed to the respective owners or occupiers of the premises fronting, adjoining or abutting on the street, to require them to sewer, level, pave, metal, flag, channel or make good or provide proper means for lighting the same within a time to be specified in the notice. A form of such notice will be found in Sched. 4 to the Act of 1875 (Form G). The giving of the notice is a condition precedent to the right of the local authority to recover the expenses of any works done under the section. It will be observed that the notice may be addressed to the owners or occupiers of premises, although under the Act, or at least so far as s. 150 is concerned, the expenses are recoverable from the owners only. In this connection it may be well to remember that the expression "owner" is defined by s. 4 and means the person for the time being receiving the rack rent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack rent.

(*To be continued.*)

Residence Enforced on Probation.

Section 8 of the Criminal Justice Administration Act, 1914, provided that a recognisance under the Probation of Offenders Act, 1907, might "contain such additional conditions with respect to residence . . . as the court may, having regard to the particular circumstances of the case, consider necessary for preventing a repetition of the same offence or the commission of other offences." Only after considerable misgiving and much discussion did this enactment become law.

The provision is very wide, but there are limits to its exercise by no means generally observed, and conditions are sometimes imposed, which it is difficult to suppose would be upheld by the High Court.

The first consideration to be borne in mind is the general purpose of the Act. It is to avoid punishment and seek reformation. Obviously, therefore, any residence condition penal in its nature contravenes the Act. A condition has been made, for instance, that a probationer should, during the whole period of the recognisance, reside in a poor law institution. Quite clearly, such a condition, imposing a much more prolonged restraint on liberty that justices can in most cases impose by way of direct imprisonment, is *ultra vires*, though a short period of detention in such an institution, under compulsion of a condition in a recognisance agreed to by the defendant, might be in order, especially where his offence was a result of indigent circumstances.

It is, of course, the voluntary acceptance of the conditions (which, be it remembered, as it is often forgotten, is of the essence of any recognisance) which makes lawful many things that would otherwise be wrong, but there must be limits to this doctrine, and the recognisance must be drawn in definite terms so that the accused does really know to what he is binding himself. It is the vice in many of these recognisances that they are, often as a matter of routine, drawn in too vague and general terms. "That he (or she) do reside where directed by the probation officer," is common, but by no means good, form. It leaves too much latitude to the probation officer. If he wants any variation of a specific condition as to residence imposed in the first instance he can quite easily get the recognisance varied by the court. The form of recognisance provided by the Summary Jurisdiction Rules, 1915 (Form 68), has "That you reside at . . .," clearly intending the naming of a definite place.

That place must be selected with a view to the prevention of future offences, and not for some ulterior object, however beneficial that object may be to society or even to the probationer himself or herself. Thus a condition, frequently imposed on a prostitute suffering from venereal disease, that she shall reside in a lock hospital, is clearly *ultra vires*. Her cure will not prevent a repetition of her offence, will indeed, if anything, tend to facilitate future wrongdoing. Of course the argument may be put forward that at least while she is in hospital she cannot commit offences, but this argument is so quickly capable of reduction to the absurd, that it is seen to be absurd from the beginning. Any form of confinement will prevent the commission of some offences, but it cannot be insisted upon too often that the Probation of Offenders Act does not authorise any form of detention whatever. No one could defend a condition "that you do reside in a locked room for three years," though it might well prevent a repetition of offence. There are some arguments it is a little difficult to be patient with.

Another condition that is occasionally imposed offers more difficulty—a condition barring a particular area; but this yields to analysis too. The condition is sometimes imposed on beggars or other vagrants that they "do reside outside" a particular county or city for three years. This condition is directed only to a repetition of the offence *in that particular place*. It is not contemplated as reformative, or as preventing any repetition of the offence anywhere. It is simply a harrying of the vagrant in the style of our forefathers, and removing a cause of offence for our own ground to our neighbour's.

Sometimes the condition is carried further, and requires residence outside the Kingdom. A moment's reflection will satisfy almost anyone that the Probation of Offenders Act, 1907, does not confer power, either directly or indirectly, to expatriate a British subject. In the case of an alien even, a specific law is required for this purpose. But of course very few infringements of English criminal law can be committed outside the Kingdom, and there are, we suppose, a few people in the land who would be found to argue that as expatriation prevents a repetition of the offence a condition imposing it is defensible. With such it is useless to argue, but occasionally a condition involving expatriation presents itself in such a tempting and innocent guise that the essential illegality of imposing it is lost sight of.

A case before a bench a short time ago is one very much in point. A woman, under the domination of a man of bad character, was committing fraud after fraud with bogus cheques. She was apprehended and dealt with summarily. She had a mother resident on the Continent, and for her to be dealt with under the Probation of Offenders Act, and be sent to that mother, was the natural and right thing to do. It was imposed as a formal condition of the recognisance, that "you do reside at [a place in a foreign county]." We have no hesitation in saying that this condition was bad in law. It involves subjecting a British subject to living where her status would be determined by foreign law, and it further imposed on her a condition which, for all she knew, she could not fulfil or continue to fulfil, because of unknown requirements of that foreign law. But apart from that, if there is one clear right of a British subject, it is that he is entitled to live in his own country; and he cannot be compelled, under alternative of punishment, to barter this away.

The instance selected is one, where apart from principle, there was everything to be said for imposing the condition. It does, therefore, most usefully illustrate the proposition sought to be here established, that residence conditions in probation recognisances have to be imposed, not at the arbitrary will of the bench, but subject to certain limitations due to the principles of law.

THE MIDDLESEX HOSPITAL.

When called upon to advise as to Legacies, please do not forget the Claims of the Middlesex Hospital, Which is urgently in need of Funds for its Humane Work.

Motor Car Insurance Claims.

THE very large increase in the use of motor cars in recent years and in the number of street accidents arising therefrom adds interest and importance to a case decided by Mr. Justice ROCHE on Tuesday: *James* v. *British General Insurance Co., Ltd.*, 71 SOL. J., p. 273, in favour of the plaintiff who claimed to be indemnified under an insurance policy issued by the defendants. The plaintiff, who was drunk while driving his motor car, collided with a motor bicycle, on which were two men. One of them was killed, for which the plaintiff was convicted of manslaughter; the other suffered injuries, and himself brought a civil action against the present plaintiff, and recovered heavy damages. It was in respect of those damages that the plaintiff claimed to be indemnified. The defendants contended that as the plaintiff was drunk at the time of the collision, and had been found guilty of manslaughter, he was not entitled to an indemnity and that it would be against public policy to find in his favour. No action was brought under Lord Campbell's Act in respect of the man who was killed.

The basis of the decision in favour of the plaintiff rested on the absence of intention, and in applying that principle, the judge followed the decision of Mr. Justice BAILHACHE, in *Tinline* v. *White Cross Insurance Co.*, 1921, 3 K.B. 327. There, however, the plaintiff was held not to be drunk, and it was sought to distinguish the present case on that ground. Mr. Justice ROCHE said, on that point, that: "He found it difficult to believe that the plaintiff was any worse morally than people who in their sober senses drove to the danger of the public. Both were guilty of negligence, for which they were liable in a criminal court." That view must appeal to common sense. Though drunkenness may imply negligence in the driving of a motor car, it does not always imply recklessness, while a sober person who drives without regard to the public safety may, in his selfishness, approach more nearly to intention should anyone be injured in consequence of such driving. The actual result of an impending collision cannot be forseen, and it would obviously be unfair to attempt to draw any distinction, from the results of any accident which may occur, between a driver's lack of control over a motor car due to drunkenness and reckless driving. To do so would be to hold that, where two or more different results arise out of the act of negligence, different degrees of negligence must be applied to the initial act in respect of each separate consequence, which, to say the least, would be illogical. Had the plaintiff not been drunk his claim to be indemnified could not have been resisted, even if there had also been a successful action against him under Lord Campbell's Act, owing to the decision in *Tinline* v. *White Cross Insurance Co., supra.* Why should it make any difference because he was drunk? Negligence was the keynote to the whole matter, which of necessity excludes intention. To argue that to get drunk is an intentional act cannot import an intention to bring about the results of an accident. The very construction of such a thought discloses a contradiction in ideas. Mr. Justice ROCHE rejected the argument and dealt with it as stated above.

The defendants further said that it would be against public policy to allow the plaintiff to succeed. But the judge rejected that contention also, and, in doing so, held that the doctrine, if applicable at all, was applicable to all persons driving to the common danger. Nor would the matter rest there; for there could be no half-measures, since it would be impossible to know where to draw the dividing line. If the principle were invoked it would be necessary to apply it to every case of insurance where the person seeking an indemnity has committed an unlawful act, which would include workmen insured against accidents who suffer injuries as the result of breaches of the Factory Acts. So widespread an application of the doctrine would be an undue and grandmotherly interference with the freedom of contract and the rights and liabilities of the individual.

It is to be remembered that the basis of liability throughout, whether in the sphere of criminal or civil liability, rests upon negligence. The morality of the high-sounding phrase "public policy" is liable, as Mr. Justice BURROUGH said in *Richardson* v. *Mellish*, 2 Bing., at p. 252, to "lead you from the sound law." And he goes to the root of the weakness of the doctrine when he says: "It is never argued at all but when other points fail." The law moves from precedent to precedent and loves to feel that all the reins which lead from decision to decision are securely held and properly controlled. However gentle and serene the over-riding doctrine of public policy may seem in argument by the side advancing it, it is, nevertheless, as Mr. Justice BURROUGH in the same case said, "a very unruly horse, and when once you get astride it you never know where it will carry you." Once the plea has received judicial sanction the bit is between the teeth and the doctrine will leap carelessly from the path of cases for which it was intended to be a precedent and roam at large over the ploughed and unploughed fields of judicial decision. There can be no doubt that the decision of Mr. Justice ROCHE accords with practical convenience and common-sense.

A Conveyancer's Diary.

Power of Special Personal Representatives to Dispose of "Settled Land"—*continued.*

Section 39 of the Ad. of E.A., 1925, provides that "in dealing with the real and personal estate *of the deceased*, his personal representatives shall, for purposes of administration, or during a minority of any beneficiary or the subsistence of any life interest, or until the period of distribution arrives, have":—

(i) the pre-1926 powers of a personal representative with respect to personal estate vested in him;

(ii) powers and duties of trustees holding land upon an effectual trust for sale; and

(iii) the statutory powers of trustees for sale.

It may be argued that the words "real and personal estate of the deceased" include only his *own* real and personal estate and exclude property vested in the deceased as trustee (including settled land vested in him as tenant for life). If we turn to the definition of real estate contained in s. 55 (1) (xix), we find that expression defined to mean real estate, which by virtue of Pt. I of the Act devolves on the personal representatives of a deceased person, and this we have already seen includes real estate held on trust including settled land: *ib.*, s. 3 (1) (ii). This definition has effect unless the context otherwise required: s. 55 (1). The fact that the section speaks of "distribution" which is a term inapplicable in the ordinary sense to a strict settlement and that it confers during a minority powers wider than and perhaps not consistent with S.L.A., 1925, s. 26, and that it would appear to confer on the personal representatives of a last surviving trustee powers which are wider than those conferred by T.A., 1925, s. 18 (2), may be taken as an indication of a context requiring a different meaning, either generally or with respect to different kinds of personal representatives.

It seems clear, however, that a general power of disposition "for the purposes of administration" is assumed by the section of the S.L.A. to which reference has already been made, and by s. 24 of the Ad. of E. A. Section 39 expressly confers such a power for the purposes of administration, and the question now naturally arises what can such purposes be in relation to settled land and trust estates generally, vested in special or other personal representatives?

The following may be mentioned as matters which appear to fall within the province of "administration":—

(1) Special representatives are now to take a special grant of representation and will have testamentary expenses to discharge.

(2) They have death duties to pay for which they are accountable under L.P.A., 1925, s. 16 (1); but it is true that they have express power to raise these duties and costs under *ib.*, 16 (3).

(3) Further statutory obligations are imposed upon them by S.L.A., s. 16, e.g., for creating legal estates required to be created in priority to the settlement and for raising sums immediately required to be raised on the security of the land. The costs of raising such charges will need to be discharged.

(4) Under, e.g., ss. 7 and 8, the personal representatives may be called upon to execute conveyances, the costs of which they must discharge out of the trust estate: s. 8 (2).

(5) Moreover, until the personal representatives execute a conveyance or assent under ss. 7 or 8 they remain estate owners and will, presumably, be responsible for all outgoings in respect of which they will have the usual indemnity implied by law.

It is submitted that all these purposes—and generally the fulfilment of any duties and obligations imposed on them as estate owners by the Acts or otherwise—are "purposes of administration." Viewed from another aspect the special representatives have active duties to perform in respect of the estate vested in them as such, and are not mere "conduit-pipes" for the transfer of the legal estate in settled land to the person next entitled.

Our general conclusion then is that special representatives are by s. 39 (1) given a general power of disposition of settled land vested in them "for the purposes of administration." Whether or not a sale or other transaction is justifiable as between the beneficiaries and the special representatives is a matter of no concern to the purchaser, who receives ample protection under S.L.A., 1925, s. 110 (3).

(To be continued.)

Landlord and Tenant Notebook.

Decontrol.

The question of the decontrol of premises to which the Rent Restrictions Acts apply was again before the court in the case of *Cohen* v. *Gold*, *Times*, 25th March, 1927, and the point raised in that case would appear to be an entirely new one.

The short facts in *Cohen* v. *Gold* were as follows: Premises had been demised in 1871 for a term of sixty-eight years, expiring therefore, in 1937. In June, 1913, the appellant Cohen bought the remainder of the term. The appellant, after he bought the house, had lived there, and had personally occupied the whole thereof, with the exception of the top floor, which apparently had previously thereto been let to and occupied by the respondent Gold, who at the date of the proceedings was still in possession thereof. In May, 1925, Cohen let three rooms on the ground floor to Gold, and it was in respect of these three rooms that the action for possession was brought. It was argued on behalf of the landlord that inasmuch as the landlord Cohen was in possession of the rooms in question subsequently to the 31st July, 1923, the rooms were decontrolled. But the Divisional Court did not accept this contention as being the correct one, and held that the rooms were not decontrolled.

It may be of advantage, therefore, to test the correctness of the above decision in the light of the authorities. The material provision is of course, s. 2 (1) of the 1923 Rent Act, which is as follows: "Where the landlord . . . is in possession of the *whole* of the dwelling-house at the passing of this Act (31st July 1923), or comes into possession of the *whole* at any time after the passing of the Act . . . the principal Act shall cease to apply to the dwelling-house: Provided that, where *part* of a dwelling-house to which the principal Act applies is lawfully sub-let, and the part so sub-let is also a dwelling-house to which the principal Act applies, the principal Act shall not cease to apply to the part so sub-let by reason of the landlord being in or coming into possession of that part, and if the landlord is in or comes into possession of any part not so sub-let, the principal Act shall cease to apply to that part notwithstanding that a sub-tenant continues in or retains possession of any other part by virtue of the principal Act."

Let us examine *Dunbar* v. *Smith*, 1926, 1 K.B. 360, in the first instance. There the material facts were that a house had been let continuously since 1914, in separate flats, and that the landlord came into possession of one of these flats subsequently to the 31st July, 1923. The court held that as each of the flats had to be regarded as a separate dwelling-house, and that since therefore the landlord had come into possession of the whole of one of these "dwelling-houses," that particular dwelling-house had thereby become decontrolled. as Bankes, L. J., pointed out in his judgment: "It is necessary to bear in mind that the whole scheme of these Acts rests upon the possibility of a structure becoming for the purpose of the Acts, a number of dwelling-houses, and when s. 2 (1) speaks of the landlord of a dwelling-house to which the principal Act applies, it is referring definitely to what the Act of 1920 prescribes shall be deemed to be a dwelling-house, that is to say, any part of a house, separately let, the rent of which is within the statutory limit."

Although it is clear that part of the dwelling-house is to be regarded in certain circumstances as the *whole* of a dwelling-house for the purpose of the Rent Acts, and incidentally for the purposes of decontrol the difficulty is to determine when one is entitled and when one is not entitled, to treat a "part," as a "whole." *Dunbar* v. *Smith*, it seems, is to be explained on the footing that each of the flats in that case, had been let separately on the 3rd August, 1914, and that each accordingly had individual standard rents of their own, i.e., standard rents, which had not to be determined by any apportionment.

With *Dunbar* v. *Smith*, however, should be contrasted the case of *Catto* v. *Curry*, 1926, 1 K.B. 460. There a tenant had sub-let in 1921 part of the demised premises to a sub-tenant. The sub-tenant in January, 1924, gave up possession thereof to the tenant, who subsequently sub-let them to another person. It was held that the part in question was not decontrolled. *Catto* v. *Curry* is, of course, distinguishable from *Dunbar* v. *Smith*, inasmuch as in the former case it was the *tenant*, while in the latter, it was the landlord who came into possession.

Catto v. *Curry* does not appear to be quite as relevant to the facts in *Cohen* v. *Gold* as *Dunbar* v. *Smith*, and it seems exceedingly difficult if not impossible to reconcile the decision of the Divisional Court in *Cohen* v. *Gold* with *Dunbar* v. *Smith*. The Divisional Court differentiated the two cases on the ground that in *Cohen* v. *Gold* the rooms, possession of which were being claimed, were not in themselves a dwelling-house. Thus, in his judgment, Talbot, J., says: "It was, however, to be observed, that at the time when the appellant (i.e., the landlord Cohen) was in actual possession of the three rooms, *they were not a dwelling-house, but only part of one, in that they had not at that time been let separately*, and there was no landlord and no tenant of them . . . It seemed clear that the section (i.e., s. 2 (1) of the 1923 Act) did not apply to a case where the possession of the person who was now in fact the landlord was not, at the time of the passing of the Act the possession of a dwelling-house let separately or possession by a landlord. Inasmuch therefore as the appellant was not in possession of the dwelling-house *formed by those three rooms* at the material time, he had not established his claim that the dwelling-house was decontrolled."

Later in his judgment, in referring to *Dunbar* v. *Smith*, the learned judge says: "What differentiated that case from the present one, was that there the landlord, after the passing of the Act, came into possession of that which was already a dwelling-house within the meaning of the Rent Restrictions Act, and of which he was already landlord at the time when he came into possession."

What the court therefore apparently decided in effect is this: that where in circumstances similar to those in *Dunbar* v. *Smith*, a part of a dwelling-house will become decontrolled, there will be no such decontrol, unless the *whole* of such part is subsequently let. This may be illustrated as follows. Each floor (consisting of, say, five rooms) of a house has been let separately since August, 1914, and the landlord obtains possession of one of these floors subsequently to the 31st July, 1923. If he lets the whole of the floor, i.e., all the five rooms subsequently, the floor will be decontrolled, but this would not be the case if he were to let only part of the floor in question (as, for example, three rooms only).

This is the only natural result of the decision of the Divisional Court in *Cohen* v. *Gold*, which it is respectfully submitted is clearly erroneous. Let us test the matter this way. Ever since 1914 the top floor was let to Gold. Assume, however, that the rest of the premises had since 1914 been let by Cohen to another tenant, *Dunbar* v. *Smith* would clearly apply. Each part taken separately would be a separate dwelling-house. Assume now that the landlord, as in *Dunbar* v. *Smith*, had obtained possession of the whole of this part of the premises not sub-let to Gold, that part would clearly become decontrolled according to *Dunbar* v. *Smith*. That being so, what applies to the whole equally applies to the part, and every single room in such dwelling-house would be decontrolled. So that if the landlord subsequently lets two rooms only, these two rooms would clearly be decontrolled.

Now, whether the landlord himself is in possession of the part of the whole house, or whether such part is in the possession of a tenant, of his, makes no difference whatsoever, and the result is therefore the same, whether he elects subsequently to let the whole or part of such part.

Again, the case may be put in this way. There were in *Cohen* v. *Gold* really two separate dwelling-houses for the purpose of the Rent Acts, i.e., one occupied by Gold, the tenant, and the other occupied by Cohen, the landlord. The landlord, Cohen, was in possession of the whole of such dwelling-house on and after the 31st July, 1923. The whole of *that* dwelling-house therefore became decontrolled, and the landlord was at liberty to treat the *whole* or *any part* of that "dwelling-house" as decontrolled.

Correspondence.

Re Booth and Southend-on-Sea Estates Co.

Sir,—Referring to the observations in "A Conveyancer's Diary" in your issue of 19th March, it is there suggested that this case could have been decided shortly on the words in s. 29 (1) of the Settled Land Act, 1925, "not so as to impose any obligation in respect of or to affect" (*inter alia*) "the appointment or number of trustees of such trust." These words were certainly not overlooked by anyone concerned in the case, but the view was taken, and it is submitted, rightly taken, that the case did not turn on them. The words "number of trustees" appear to have reference to the provisions of s. 34 of the Trustee Act, 1925, that the number of trustees is not to exceed four or to be increased beyond four, and do not seem to override in the case of charitable trusts the express provision of s. 94 of the Settled Land Act, 1925, that capital money arising under the Act shall not be paid to fewer than two persons as trustees of a settlement unless the trustee is a trust corporation (see also s. 14 (2) of the Trustee Act, 1925). That provision relates to the number of trustees who must give a receipt for capital money arising under the Act, and the case was decided on the ground that s. 94 did not apply to it. If the words in s. 29 had the meaning suggested, a single trustee of a charity exercising the Settled Land Act powers conferred by s. 29 would be in the very special position of being able to give a good receipt for capital moneys under that Act. That could hardly have been intended. FRANK G. UNDERHAY.

[The force of Mr. Underhay's reasoning is fully appreciated, but we respectfully adhere to the view expressed in "A Conveyancer's Diary" on p. 223, *supra*. In fact, we are confirmed in that view by reference to the marginal note to S.L.A., 1925, s. 94 (1), which reads as follows: "Number of trustees to act." Though, of course, the marginal note is not a binding part of the Act, it, in this case, at any rate, indicates the draftsman's view of the meaning of the expression "number of trustees." In our opinion then, the words "number of trustees" are intended to refer directly to s. 94, which section is intended to have no application to charity lands.

The whole object of s. 29, it is conceived, is to give S.L.A. powers to trustees of charity lands without affecting the mode of exercise of powers by such trustees or affecting the number of such trustees necessary to give a valid receipt. We think that a single trustee of charity lands *was* intended to give a valid receipt when exercising S.L.A. powers in a case where there is in fact only one such trustee.

There is, of course, no suggestion in the "Diary" that the matter had been overlooked by those in the case.—ED., *Sol. J.*]

Consolidated Index.

Sir,—We have in our possession two indexes to articles, etc., of permanent utility contained in THE SOLICITORS' JOURNAL, one index relating to Volumes 38 to 47, and the other to Volumes 48 to 55. We shall be glad to know whether any subsequent index of this kind has been issued, and, if not, may we suggest that a consolidated index to the end of 1926 of such articles would be very useful to practitioners.

Manchester. TAYLOR, KIRKMAN & MAINPRICE.
18th March.

Publication of Points in Practice.

Sir,—We shall be glad to know if you propose publishing in one volume the "Points in Practice" under the Law of Property Acts referred to in the General Index to Vol. 70 of THE SOLICITORS' JOURNAL.

Norwich. COZENS-HARDY & JEWSON.
17th March.

[We are most grateful to our subscribers for the above suggestions and shall be glad to give them our most careful consideration. An expression of opinion from other subscribers would, however, be much appreciated.—ED. *Sol. J.*]

SOLICITOR CONVICTED OF FRAUD.

At the Leeds Assizes, before Mr. Justice Fraser, Richard Hoey, fifty-four, a solicitor practising at Barnsley, pleaded "Not Guilty" to charges of fraudulent conversion of title-deeds and obtaining £250 by false pretences. The case for the prosecution, which had been initiated by the Barnsley Law Society, was that the accused borrowed £250 from John William Greenwood, a colliery deputy, saying it was for Harry Bales, a watchmaker, and giving Greenwood title-deeds of property belonging to Alfred Winter, commission agent, another client. Mr. E. C. Chappel, for the defence, said the offence was a technical one, and no one had suffered but the accused through rumours and reports that had been going round. Bales, Winter, and Greenwood each said they had no desire to prosecute. Greenwood said he had received £48 back in repayment and was content with the arrangement for the repayment of the rest. Hoey was found Guilty on all counts.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4, be typewritten on one side of the paper only, and be in triplicate. Each copy to contain the name and address of the Subscriber. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

TRUST FOR SALE—DEATH OF ONE TRUSTEE—MORTGAGE —TITLE.

728. *Q.* Land is conveyed to A and B on trust for sale with power to postpone sale, rents and profits until sale and the income of the proceeds thereafter to be paid to A for life with remainder to B absolutely. A has recently died and the land is still unsold, no new trustee has been appointed to act with B, and he has found a purchaser of the land. In order to have two trustees to give a valid receipt for the purchase money, is there any objection to the purchaser being appointed a co-trustee with B by the same deed which conveys the land to the purchaser? If there is no such objection, is it to be assumed that the deed would attract a 10s. stamp on the appointment in addition to *ad valorem* stamp duty on the conveyance? Supposing B had mortgaged his reversionary interest, and notice thereof was given to A and B. Could the mortgagee register a charge against the land? If capable of registration against what name or names should a purchaser search? If not, what protection has the mortgagee if, on the death of A, B appoints a new trustee, fraudulently suppresses the notice the land is sold and B receives the purchase money?

A. The land is now held by B in law and in equity, and so he can elect to take it unconverted. Hence, it is unnecessary to make any appointment of a new or additional trustee. Searches should be made against the names of A and B, i.e., the estate owners for charges affecting the land; charges affecting B's reversionary interest ought not to have been registered against the land. B's mortgagee can now call for a legal mortgage or demand custody of the title deeds. In the former case he would concur in the conveyance to the purchaser, and in the latter case would only give up the title deeds on being paid the mortgage debt.

SETTLED LAND—SUB-SETTLEMENT—TITLE.

729. *Q.* A by his will appointed X and Y executors and trustees, and devised certain freeholds to his trustees upon trust to pay the annual income equally between his wife B, and his daughter X, during the lifetime of his wife and after decease, of wife in trust for X absolutely. A died in 1917, and Y is dead. X died before 1926 and by her will appointed Z executor and trustee, and bequeathed all her property to her trustee upon trust to sell and to divide net proceeds equally between X and W, but subject to life interest of B under A's will. B is still alive, and it is desired to sell the freeholds. It is assumed that the property is settled land and that B and Z (as executor of X's will) are joint tenants for life, and that a vesting deed should be executed, but is Z as personal representative of the surviving trustee of A's will a trustee within s. 30 (3) of the S.L.A., 1925? If not it is assumed that trustees could be appointed by B, Z and W under s. 30 (1), para. (v). B is willing to surrender her life interest, and if she did so could a title be made under the trust for sale contained in X's will notwithstanding that her estate is not fully administered?

A. It is assumed that Y predeceased X. On 1st January, 1925, the land, it seems, became settled land under the new para. 4 of Pt. IV., 1st Sch., L.P.A., 1925, Z and B being the tenants for life and Z being the S.L.A. trustee under S.L.A., 1925, s. 30 (3). Z can appoint another trustee to act with him and then execute a vesting deed, when title can be made by the tenants for life. If B surrenders her life interest, the land ceases to be settled land, and Z can take a conveyance to himself as trustee of X's will. He can then appoint another trustee to act with him, when B has released her interest Z will assent in writing to the vesting of the land in himself as trustee of X's will, and there is nothing to prevent his making such an assent before the whole estate has been administered provided, of course, he is satisfied that he retains sufficient assets in his hands.

Title can be made in either of the above ways.

MORTGAGE OF LEASEHOLDS BY SUB-DEMISE—SALE—NOMINAL REVERSION.

730. *Q.* A, a freeholder, grants a building lease to B. B mortgages by demise to C, and there is no declaration of trust as to the nominal reversion. C realises his security in 1920 by selling the mortgage term to D. In 1921 D purchases the ground rent from A. D has now contracted to sell the fee simple to X. X, on investigating the title, finds three days outstanding. Should he accept the title, and can he take a conveyance of the freehold in possession from D?

A. When C realised his security in 1920, and sold the leasehold, he had no power to convey the nominal reversion, as one in his then position has now under the L.P.A., 1920, s. 89 (1), and had before 1882 under Lord Cranworth's Act, 1860, s. 15. The nominal reversion is still therefore vested in B or his executors or assigns, and no merger has taken place. There is therefore a flaw in the title, but it is not one which should deter a willing purchaser, who will be fully protected by the vendor's covenants for title according to *Page* v. *M.R. Co.*, 1894, 1 Ch. 11. Probably the purchaser can reject the title, in which case the vendor may rescind if the contract so provides: see *re Deighton and Harris*, 1898, 1 Ch. 458. In the above answer it is assumed that the mortgage was made after 1881, otherwise the sale may have passed the reversion: see *re Solomon and Meagher's Contract*, 1889, 40 C.D. 508.

SETTLED LAND—CONVERSION—PROCEDURE.

731. *Q.* By his will made in September, 1915, A B gave a dwelling-house unto his trustees in trust to permit his wife to use the said house rent free during her life if she should so long continue his widow, as a residence for herself and such of his children as should for the time being be unmarried and should desire to remain at home. After the death or re-marriage of his said wife (whichever should first happen) testator directed that the said dwelling-house should fall into and form part of his residuary estate. Testator devised and bequeathed all his real and personal estate not thereby otherwise disposed of unto his trustees upon trust that his trustees should sell, call in and convert into money the same or such part thereof as should not consist of money, and should pay his funeral expenses, etc., and invest the money as therein mentioned. Testator declared that his trustees might postpone the sale and conversion of any part of his real and personal estate for so long as they should think fit. The testator died in October, 1915, leaving his wife surviving. C D, a daughter of the testator, who was entitled to a share in the residuary estate of the testator died intestate in October, 1915, leaving no children, but leaving a husband and brothers and sisters her surviving. The widow of the testator is still alive and is unmarried.

(1) On the death of C D does her expectant interest in the dwelling-house form part of her personal estate, or does it form part of her real estate?

(2) Was such dwelling-house converted into personalty on the death of the testator, or will it only become converted

when it falls into the residuary estate, e.g., on the death or re-marriage of the widow, whichever first happens ?

(3) If the dwelling-house is only converted when it falls into the residuary estate, I presume that the dwelling-house is settled land within the meaning of the S.L.A., 1925. Is this so ?

(4) If the dwelling-house is settled land, the fee simple thereof will now be vested in the widow, and I should be pleased to know what steps should be taken in the event of the widow remarrying to re-vest the fee simple in the trustees.

A. C D's reversion was of property notionally converted into personalty by the equitable doctrine, and the new legislation has not destroyed the vested interests of her next-of-kin under the Statutes of Distributions.

(2) The notional conversion applies after the death or re-marriage of the widow.

(3) Yes.

(4) The trustees, who are trustees for the purposes of the S.L.A., 1925, by virtue of s. 30 (1) (iv), should, while the widow is single, execute a vesting deed in her favour, and, if and when she re-marries, require her to convey the land to them under s. 7 (5).

Trust Mortgage—Transfer—Procedure.

732. *Q.* X, who died in 1905, by his will duly proved, devised his dwelling-house to his trustees upon trust for sale, and to pay the income of the net proceeds of sale to his wife A during her life, and after her decease to hold the same upon trust for his daughters B and C equally. A died in 1906, and in 1913 the trustees of X's will conveyed the said dwelling-house to B and C in fee simple as tenants in common. In 1920 B and C sold and conveyed the said dwelling-house to D, it being recited in the conveyance that the vendors were seised in fee simple in possession as tenants in common free from incumbrances, and the purchase money was paid to them in equal shares. A part of the purchase money was secured by a mortgage of the dwelling-house from D to B and C, the consideration being stated in the mortgage as having been paid by the mortgagees out of moneys belonging to them on a joint account. B died in 1926, having by her will devised and bequeathed the residue of her estate to her son E absolutely. C now desires as surviving mortgagee to transfer the mortgage to herself and E. As solicitor for C, I have prepared an appointment by C, appointing E to be a trustee for the purposes of the mortgage in the place of B, and to act with C, and also a transfer of the mortgage by C to C and E. E's solicitors contend that, having regard to the provisions of s. 111 of the L.P.A., 1925, a deed of appointment of E as a new trustee is not necessary and that all that is required is a transfer of mortgage by C to herself and E. Is this contention correct ? No sale by the mortgagees under their power of sale is contemplated.

A. Assuming that E is in fact entitled to half the mortgage money, the simpler procedure suggested by E's solicitors will be correct *vis-à-vis* the mortgagor or a purchaser in accordance with the L.P.A., 1925, ss. 111-113, and C and E will be *ipso facto* trustees in equity, so no specific appointment of E as trustee is really necessary.

Charity—Dissenting Chapel—Appointment of New Trustees.

733. *Q.* By a deed executed in 1822, a dissenting chapel was vested in nine trustees upon trust to permit it to be used by Protestant Dissenters called Presbyterians or Independents, and to allow the chapel to be occupied by a minister to be chosen by the members in fellowship with the consent and approbation of the trustees. The deed does not contain any power to the trustees to sell the property, but does contain a provision that when the number of trustees shall by death or otherwise be reduced to five, they shall by deed under their hands appoint new trustees not exceeding in the whole fifteen in number. New trustees are about to be appointed, only one of the old trustees now surviving, and the points arising are as follows :—

(1) Is it practicable, having regard to the provisions as to the new trustees being appointed by the surviving trustees, to carry out the appointment of new trustees under Peto's Act and the Acts amending same ?

(2) Is it clear that as there are less than five trustees now surviving, the sole surviving trustee can legally appoint the new trustees ?

(3) If Peto's Act is not available, should the appointment of new trustees be in the usual form of the ordinary appointment of new trustees of any property, and should the deed contain a vesting declaration, or can the property be safely left to vest in the new trustees, and the old trustee, under s. 40 (1) (*b*) of the T.A., 1925 ?

(4) Is it necessary that there shall be two deeds, one appointing the new trustees, and the other vesting the property in them ?

A. (1) and (2) Under s. 3 of the Trustees Appointment Act, 1890, the machinery both of the Act of 1850 and that of 1925 is available for the appointment of new trustees. If therefore the surviving trustee appoints by virtue of all powers vested in him, and the old Act is not applicable in the circumstances, the new will be.

(3) On such an appointment the property will automatically vest in the new trustees either under s. 1 of the Act of 1850 or the T.A., 1925, s. 40 (1) (*b*).

(4) No.

As to sale, see the S.L.A., s. 29, and as to number of new trustees, see T.A., 1925, s. 34 (3) (*a*).

Copyholds—Onerous Devise—Disclaimer.

734. *Q.* A copyhold tenant of a fine arbitrary manor died on 14th August, 1926, having by his will, dated 2nd March, 1923, appointed an executor and bequeathed the residue of his estate (which included the copyholds) to his three children (of whom the executor is one) to be divided into equal shares. The executor wrote to the steward enquiring what would be the amount of the fines and fees on taking up the property and what would be the cost of freeing the property from the manorial incidents. The steward of the manor therefore gave the executor the information he asked for, and he received a reply that the three children had decided to allow the property to revert to the lord of the manor. The property is let for £5 a year, but it is old and dilapidated and is probably not worth the amount of the fine and fees and the cost of freeing it. The lord is not desirous of taking over the property if he can avoid it. Under these circumstances what can the lord do ? Are there any means by which he can compel the children to pay the fine and fees ? If not, and the lord has to take over the property, what has to be done to complete the lord's title ?

A. It has been laid down that, by our law, no man is compelled (as was once the case by Roman Law) to take a *damnosa hereditas :* see *Townsend* v. *Tickell*, 1819, 3 B. & Ald. 31. An executor, however, if he does prove, cannot renounce onerous leaseholds, see *Billinghurst* v. *Speerman*, 1696, 1 Salk., 297, and the opinion is here given that under the A.E.A., 1925, s. 1 (1), he must take the copyholds. And, as between beneficiaries under the will, devisees of the copyholds might be put to election, apart from the question whether *Townsend* v. *Tickell* is consistent with the very positive provisions in the A.E.A., 1925, s. 36 (2). But, in respect of former copyholds, the latter sub-section must be subject to the L.P.A., 1922, s. 129 (1), so the devisees can avoid the gift by omitting to produce the assent to the steward. If they take this course, and they and the executors are content to relinquish the copyholds, there does not appear to be any machinery by which either lord or steward can recover fines or fees from anybody—unless, indeed, such an assent, before it is avoided, is a " transaction " within s. 130 (1), making the fines simple contract debts within sub-s. (5). This, however, is very doubtful,

and the liability can in any case be avoided if the executors refrain from assent. The matter seems, therefore, one for reasonable compromise, unless the property is to be handed over to the tenants, though the opinion is here given that the saving in s. 128 (2) (*c*) preserves the lord's right to seizure *quousque*. But if the lord takes over the property, the simplest and best way will be by conveyance by the executors by the direction of the beneficiaries, the lord releasing all right to fines, etc., and indemnifying against any liability in respect of steward's fees.

Reviews.

International Private Law or The Conflict of Laws. By W. Nembhard Hibbert, LL.D. London: University of London Press, Limited. 1927. La. 8vo. xl and 237 pp. 10s. 6d. net.

This is a new and revised edition of a work aiming at being "rather less bulky than 'Dicey,' rather less technical in language than 'Westlake,' and rather less controversial than 'Foote'." There is room for such a book, but the subject cannot be treated anything like adequately in some 260 pages.

This book, which is well written and admirably arranged, unfortunately suffers everywhere from over-compression. The subject *is* controversial, and does not lend itself to tabloid treatment. Still, it is not without its value. To the student bewildered by the conflicting opinions of "Dicey" and other authorities it will be a relief to turn to a book which states the main principles clearly and succinctly. But he should not regard it as a *vade mecum*.

Dr. Hibbert has relegated all citations of authorities to the Index, "with a view to clearness." We are not sure that this was wise. The habit of paying due attention to the date of a decision and the standing of the court pronouncing it is one that cannot be inculcated in the student at too early a stage.

The author has omitted to point out that *Johnson* v. *Taylor Bros. Limited*, 1920, A.C. 144, H.L., has been overruled by the alteration of R.S.C., O. XI, r. 1 (*e*), made in 1921 ("White Book," p. 93).

Presumably the book went to press before the Legitimacy Declaration Act had been put on the Statute Book, but nevertheless we think the author might profitably have inserted an appendix showing the effect it has had upon such cases as *Birtwhistle* v. *Vardill*, 1840, 7 Cl. & F. 895, which now belong to the limbo of the past.

Elliott's Workmen's Compensation Acts. Ninth Edition, by Montague Berryman, of the Middle Temple, Barrister-at-law. Published by Sweet & Maxwell Limited, Chancery Lane, London. pp. xxxviii and 792.

It may or may not be that the Workmen's Compensation Act, 1925, came as a boon and a blessing to employers and employed; mercifully the legal profession is not called upon to decide the merits of legislation. It is quite a sufficient task to bear in mind the changes and developments introduced and to remember that what used to be, say s. 1 (1) in the old Act is now s. 1 (1) of the new Act, while s. 1 (2) (*b*) has taken flight and become s. 29 (1). Mr. Berryman, who doubtless has had cause to feel aggrieved at similar transpositions in other Acts has taken pains to simplify the task for others. He has prepared a table of corresponding sections of the new and old Acts, and further as he proceeds to deal with the new Act section by section, he has noted in the margin the reference to the old Acts.

It is a considerable achievement for any book to pass through nine editions, and the general scheme of "Elliott," is now too well-known to require much comment. Perhaps its greatest merit lies in the fact that is readable. There are many extremely learned books full of valuable information, particularly amongst those arranged as a commentary on an Act, which are extremely difficult to read. This state of things frequently occurs, not so much because of the inherent difficulties of the subject as because of the failure to divide and subdivide the matter. This new edition avoids this defect to a very large extent. The eye is not wearied nor the tired brain disheartened by the sight of page after page of close type unbroken by headings or paragraphs, and it is possible to find what is required without being forced to delve into irrelevant depths.

Nevertheless the difficulties of the Workmen's Compensation Acts confront one at the first glance. In the ninth edition there are no less than twenty-three pages in the Index of Cases, each page having two columns of names. This mass of litigation was perhaps unavoidable, however carefully the Acts had been drawn, but one cannot read far without realising the deplorable vagueness of this branch of the law. To take an illustration or two, what is the difference between a workman and an independent contractor? When is employment of a casual nature? No definite test has been judicially supplied to solve either problem. All that the practitioner can do is to apply common sense and look at forty or fifty cases; but it may be that common sense is then confounded. On almost identical facts one County Court judge has decided one way and another County Court judge the opposite, and the Court of Appeal has seemed to uphold both. Again and again have the Court of Appeal repeated: "This is a question of fact, with the County Court judge's decision on which we will not interfere!" The result of this "*non possumus*" attitude has been a flood of litigation which it is extremely hard to co-ordinate.

"Elliotts," is a book which is useful and well written, and though bulky not cumbrous. It may be added in conclusion that part of the new edition has been printed on thin paper to make it a more convenient *vade mecum*. R.

Books Received.

Criminal Appeal Cases. Vol. XX. Pages 1 to 28. Part 1. January and February, 1927. Medium 8vo. 28 pp. Sweet and Maxwell, Ltd., Chancery Lane. 7s. 6d. net. Prepaid Sub. to Vol. XX. £2 net.

Isalpa. The Monthly Journal of The Incorporated Society of Auctioneers and Landed Property Agents, 26A, Finsbury Square, E.C.2. Vol. I. No. 3. March, 1927. Special Annual Report Number. Subscription, 3s. 6d. per annum.

The Rating and Valuation Act, 1925, with Rules and Orders made thereunder; Enactments continuing in force; Departmental Instruction; and with an Introduction and Notes. E. M. Konstam, K.C. Second edition. 1927. Super Royal 8vo. pp. xxxvii and 362, with Index (24). Butterworth & Co., Bell-yard. 27s. 6d. net.

The Legality of the General Strike in England. A. L. Goodhart, Editor, Law Quarterly Review. Reprinted from Yale Law Journal. Medium 8vo. pp. 22. W. Heffer & Sons, Ltd., Cambridge. 1s. net.

Chitty's Statutes of Practical Utility, arranged in alphabetical and chronological order, with Notes and Indexes. Vol. 25. Part I, containing Statutes of Practical Utility passed in 1926, with Incorporated Enactments and Selected Statutory Rules. T. J. Sophian. 1927. Super Royal 8vo. pp. xxviii and 608 (with Index). Sweet & Maxwell, Ltd. and Stevens & Sons Ltd. £1 net.

From Clue to Dock. C. L. McCluer Stevens. 1927. Demy 8vo. pp. 256. Stanley Paul & Co. Ltd., 8, Endsleigh-gardens, London. 12s. 6d. net.

The Central Law Journal. Vol. 100. No. 11. 18th March, 1927. Central Law Journal Co., St. Louis, Mo. $1.00 per number. W. P. H.

UNIVERSITY COLLEGE.

RHODES LECTURES:

"The Judicial Committee of the Privy Council and Unity of Law in the Empire."

By Professor J. H. MORGAN, K.C.

LECTURE No. 3.

The Right Hon. Viscount SUMNER, G.C.B., P.C., presided at the third Rhodes Lecture, at University College, on Friday, March the 18th.

The Chairman: Mr. Provost, ladies and gentlemen, with your permission I will call on Professor Morgan to deliver his third lecture on the Judicial Committee of the Privy Council and its work.

Professor J. H. Morgan: Lord Sumner, Mr. Provost, Your Excellencies, ladies and gentlemen, to-night I speak of the Crown. But let me first carry you back into the twilight of the eighteenth century. In the year 1750, Lord Chancellor Hardwicke had before him a great case of which, in delivering judgment, he said: "This case is of a nature worthy of the judicature of a Roman Senate rather than of a single judge." And having said so much, he proceeded—with no misgivings either as to the judge or the jurisdiction—to deliver judgment. A great case it truly was—it is known in the old Chancery reports as "*Penn* v. *Baltimore*"—involving as it did, nothing less than the determination of the boundaries of two great colonies, Pennsylvania and Maryland, which long ago passed from our dominion. In those days, now almost prehistoric, Englishmen colonised by charter and entered into the possession of vast territories by deed of grant. Those were the days of what were called proprietary colonies, and the King granted Lord Baltimore and Mr. William Penn, and many another, whole territories which had never come under the surveyor's rod in the same terms as he might have granted a manor or incorporated a borough in England. The title-deeds of these colonial governments recited that the grantee should hold of us, our heirs and successors as of the "manor of East Greenwich in the County of Kent, in free and common socage, and not *in capite* or by knight's service, yielding and paying yearly to us, our heirs and successors, two elks and two black beavers." It seems an odd kind of quit-rent to pay for the tenure of a colony, but let that pass—into the legal antiquities to whose doman it belongs. Lord Baltimore and Mr. Penn had entered into articles of agreement, executed under seal for mutual consideration, in London, for settling the boundaries of the two colonies, and, when the one refused to carry out the agreement, the other applied to the Court of Chancery for a decree of specific performance. Lord Hardwicke gave it him. The question of the rule of *forum situs* did not trouble him. True it is, he conceded, that the English courts cannot in the case of lands situate outside their jurisdiction—in other words, beyond the seas—issue execution *in rem*, but equity acts *in personam*, as by the attachment or sequestration of goods of the person who is within the jurisdiction until he complies with the judgment of the court. In delivering his bold judgment, Lord Hardwicke—if I may use the expression—perceptibly winked at the court, nay more, he turned a blind eye on Whitehall, for even in those early days of 1750 a Committee of the Privy Council, the old Committee of Trade and Plantations, which is the lineal ancestor of the Judicial Committee, exercised an exclusive jurisdiction in appeals from the American Colonies, and Lord Hardwicke was perfectly well aware of the fact. Indeed, he said, somewhat apprehensively, that if this were a direct question of the *original right* of the boundaries, then, indeed, the King in Council is the proper judge, adding, as a plea of confession and avoidance, but if the agreement is disputed it is impossible for the King's Council to decree it as an agreement, for the King's Council cannot decree *in personam* in England—which was true enough.

The arm of equity was indeed long in that case, almost as long as the "Chancellor's foot," and in the development of equity Lord Hardwicke's feet were what shoemakers would call a large size. Now my object in going back thus far is to invite you to consider what, in a boundary dispute between two colonies, would happen, what indeed has lately happened—to-day. No such suit as that of *Penn* v. *Baltimore* could be entertained by the Courts of Chancery to-day. Why? Because the lands of all the overseas possessions are to-day directly vested in the Crown—the day of proprietary colonies has gone, never to return. Now it is a commonplace of constitutional law, that not only are those lands vested in the Crown but that their governments directly represent the Crown, are indeed—as Mr. Justice Isaacs said in a case in the Commonwealth Law Reports, of which more in a moment—merely "agents" of the Crown. When, in the year 1873, a certain plaintiff, named Sloman, sought to sue the Government of New Zealand, *eo nomine* in the old Court of Common Pleas, the court non-suited him with the remark "there is no such corporation as the Government of New Zealand." The Crown, they might have added, we know, the Crown "*in right*" of the United Kingdom and the Crown "*in right*" of New Zealand, but New Zealand we do not know. From that principle, which is indisputable, there follows another; no Dominion or colony can sue another dominion or colony. To hold otherwise would be to hold that the King could sue himself. When in 1861 a suppliant proceeded by petition of right in the old Court of Chancery in respect of a claim to certain lands (he prayed for re-conveyance of the lands in question to him on equitable grounds), in Canada vested in the Queen under Canadian legislation the court allowed a demurrer to his petition, and said in effect "you must bring your petition of right in Canada," while they said in fact and in so many words "the Queen"—in this case Queen Victoria—"is as much resident in Canada as in England." To the layman that may seem a hard saying. How, you may ask, could the Queen, how can our present King, be in two places at once? The answer is, of course, that the King, in the classical language of Coke, has two capacities—a natural capacity and a politic capacity. You must not sever these two capacities; if you do, you will, according to Coke, be guilty of a most "dammed and damnable opinion" and may even find yourself indicted for treason. Death indeed may appear to sever them, but only for such a fictitious moment of time as that which enables a man to die, under Lord Campbell's Fatal Accidents Act, and *in articulo mortis* to acquire the right to sue in respect of his own death. The position is summed up in the words of an old writer on the prerogative who says: "When the King dies his politic body escapes from his natural body and by a sort of legal metempsychosis enters into the natural body of his successor . . . but while his is alive, the two bodies are indissolubly united and consolidated into one." It seems—

does it not—a case for the Psychical Research Society rather than for the law? Still the fact remains, there is the King in his natural capacity and the King in his politic or governmental capacity. And lawyers, including the Privy Council, find it convenient to speak of the latter as the Crown, although Maitland has reminded us that the Crown is nothing but a chattel lying in the Tower and settled on the Hanoverian dynasty. In strictness, he reminds us, the Crown is not among the persons known to our law, unless it is merely another name for the King. "The Crown, by that name," he adds, "never sues, never prosecutes, never issues writs, or letters patent; on the fact of formal records the King does all." That is perfectly true. You will never find that a statute when conferring wide powers on the Crown to legislate—the Foreign Jurisdiction Acts, for example, says: "it shall be lawful for the Crown" but always "it shall be lawful for His Majesty in Council." None the less, the term Crown has slipped into our legal vocabulary and its usefulness is obvious. It is much more natural to say that "the Crown is one and indivisible throughout the Empire" than to say the same of the King. And therefore I shall adhere to the usage in my lecture to-night.

Now the result of all this is that, as I have said, no one colonial government can sue another. There is an exception, of a very curious kind, in the case of the Australian States, and another exception, more apparent than real, in the case of the Canadian Provinces, with both of which I will deal in a moment. But, speaking generally, the rule holds good. An English jurist—whose name I deliberately withhold for his language about the legal impossibility of one dominion suing another is so disrespectful, so menial in its kitchen metaphors, that I might get him into trouble with our great dominions overseas—recently wrote as follows: "The suit of one colony by another would be like the suit of the cook by the butler, because too much was spent on coals for the kitchen fire—or the suit of the War Office by the Board of Agriculture, because men who might be soldiers were kept at work at the harvest." What he really means by all this is, of course, that the government of each Dominion or colony are merely servants of the Crown; when they sue—for example, on an information of debt for the payment of income tax—they sue *as* the Crown, and each of these governments could no more sue one another than two agents could sue each other in respect of one and the same principal. You have therefore nothing corresponding in the jurisdiction of the Privy Council to that jurisdiction of the Supreme Court at Washington in virtue whereof that great Court has, by s. 233 of the Judicial Code, original jurisdiction in a suit by one state against another state. On the other hand, curiously enough, the Privy Council has—I should say may have—a jurisdiction which the Supreme Court emphatically has not—namely, jurisdiction in a suit brought against a British State (I use that term for the moment as a substitute for the more correct term, a British Dominion) by a British subject in that state. But, as I have said, the Supreme Court, unlike the Privy Council, can entertain suits by one state against another. There have been quite a number of such cases in America, most of them concerned with boundary disputes. So as to debts due by one American State to another American State. So even as to trespass. But there are limits to this sort of thing, and such jurisdiction is more in the nature of a declaration without consequential relief. The limits resolve themselves into this: If a court grants a decree against a government, how, supposing that government is contumacious, is the court going to enforce it? The Supreme Court has visibly flinched from deciding that point. You may remember President Jackson's cynical remark about a judgment of this kind delivered by the great Chief Justice Marshall: "John Marshall has given his judgment, now let him enforce it." And in the case of *Virginia* v. *West Virginia* you will find it in Volume 246 of the United States Reports—the Supreme Court, when faced with this question (because West Virginia refused to satisfy the judgment given against her for a lump sum of some 12,000,000 dollars), was driven to the lame and impotent conclusion that perhaps the Federal Legislature, in other words, Congress, would take steps to enforce the judgment. If Congress did not, then, said the court, we *might* consider appropriate judicial action. But unfortunately, though perhaps very wisely, the Supreme Court has never said what appropriate judicial action would be.

And by a very natural transition I am brought to the consideration of the great *Labrador Boundary Case*. Now that was not the first boundary case to come before the Privy Council, though it was certainly the most important, in view of the magnitude of the issue involved. There was a case in 1914, *The State of South Australia* v. *The State of Victoria*. But that case must be carefully distinguished from the *Labrador Boundary Case*, especially in the matter of jurisdiction. It was an appeal from a judgment of the High Court in a *suit*—an action for a declaration—between two Australian States, both subject, in virtue of the Australian Constitution and the Australian Judiciary Act, to the jurisdiction of the High Court, for Australia presents the unique spectacle of a British Dominion investing its highest court with a compulsory jurisdiction in disputes between two of its constituent states. As in so many other matters, the situation in Australia bears a fairly close resemblance to the situation in the United States, whose constitution was deliberately adopted for imitation by the draftsmen of the Australian Commonwealth Act, with the result that American cases have been treated in Australian courts as of almost binding authority in some matters. Such, for example, as the definition of what is "Inter-State Commerce," and what is a governmental "instrumentality." The result of that remarkable departure in Australia—the native home of constitutional experiments—is that you had in 1923 the Commonwealth Government bringing an action for tort against the Government, or rather the State, of New South Wales, and the High Court refusing to admit the argument of the New South Wales Government that they were a sovereign state and could not be impleaded without their own consent. "You are only a dependency," said the court, in so many words, and "if you infringe the statute law of the Empire you can be brought to book in this court." Now, undeniably New South Wales is not a sovereign state, neither for that matter is the great Dominion of Australia herself, but what becomes, in the face of such compulsory jurisdiction over a British State," i.e., the Colony of New South Wales in a suit by another state, in this case the Commonwealth, what becomes of our theory that every colonial government represents the Crown, and is the agent of the Crown, that the Crown is one and indivisible throughout the Empire, and that, in virtue of that unity and indivisibility, no one state, colony, possession, dominion, or whatever you like to call it, can sue another? The answer is that an Act of the Imperial Parliament, namely, the Australian Commonwealth Act, has created *ad hoc* this peculiar state of affairs, for in s. 75, s.-s. (4) of that Act, the High Court of Australia is expressly given jurisdiction between the component states of the Federation. That, in so doing, the Act has done some violence to the conception of the unity and indivisibility of the Crown is, I think, undeniable. You will even find in s. 58 of the Australian Interpretation Act a covert reference—at least so it has been interpreted—to the Australian States as "bodies politic." That is somewhat difficult to square with the theory that the Empire is *one*, and only one, body politic represented by the body politic of the Crown. And in this 1923 case of *The Australian Commonwealth* v. *The New South Wales State*, the court seems to be visibly struggling with the contradiction presented by the Crown in the Commonwealth suing the Crown in New South Wales, and it can only resolve it by falling back upon the hard-worked conception of agency. Still there was Article 78 of the Constitution to fall back upon and that article

under the heading of "Judicature" says this: "The Commonwealth Parliament may make laws conferring rights to proceed against the Commonwealth or a State in respect of matters within the limits of the judicial power."

Thus fortified by statute, Mr. Justice Higgins was able to say, "this action is maintainable on the part of the Commonwealth, as one *agent* of the King, against the State of New South Wales, as another *agent* of the King."

Well, all this is very ingenious, but it looks uncommonly as if the principal was undisclosed! The Crown seems very remote. The truth is that our Empire has outgrown our legal vocabulary, and I am reminded of the words of Maitland, who speaking of this paradoxical situation of the Empire which, consisting as it does of great states, yet knows only one body politic and that body the Crown, wrote this: "The modern and multicellular British State—often and perhaps harmlessly called an Empire—may prosper without a theory, but does not suggest, and were we serious in our talk of sovereignty, would hardly tolerate, a theory that is simple enough and *insular* enough, and yet withal Imperially Roman enough, to deny an essentially state-like character to those self-governing colonies, communities, commonwealths, which are knit and welded into a larger sovereign whole—we might be asked whether the British Empire has not yet *revolted* against a sovereign that was merely many (a sovereign number, as Austin said) and in no sense really one."

But I leave juristic speculation like that entirely on one side—I am only concerned with the law as it is, and not with it as it might be. The fact remains that Australia has made a bold attempt, while still clinging in theory to the unity and indivisibility of the Crown, to make of these Crown governments bodies politic. How then, you may ask, is judgment enforced in such cases? How can the King's Courts in Australia levy execution on the Crown in Australia? It is, you will say, unthinkable. Well, the answer is that they do not attempt it. The true answer is to be found in the Judiciary Act of 1903, as amended in 1908, which provides that "no execution or attachment or process in the nature thereof shall be issued against the property or revenue of the Commonwealth or a state in any such suit," but the judgment when given shall be certified to the treasurer of the party against whom judgment is given, and he shall satisfy the judgment out of moneys legally available. That, indeed, is the procedure followed under our own Petition of Right Act. But as to what would happen if the treasurer of the state unsuccessful in the litigation refused to honour the certificate, I am by no means clear. *Mandamus*, even if available, which I doubt, would be a broken reed. And supposing it was a boundary case, could the court decree possession of the lands in dispute? I doubt it.

And that brings me to the great *Labrador Boundary Case*, so recently concluded. Now this case was no exception to the rule I have laid down. The Government of Canada did not *sue* the Government of Newfoundland in the way an American State can, and does, sue another American State at Washington. Such a suit is indeed impossible. No such jurisdiction exists. What really happened was that the two governments agreed to submit the matter in dispute to the Judicial Committee who, by Order in Council, were empowered under the Act of 1833 to advise his Majesty on the point in dispute. Not only empowered, but compelled—I say compelled because whether a matter so "referred" even remotely resembles an issue in litigation or not, their lordships are bound as Privy Councillors to answer the question submitted to them. That, after a period of some doubt, was definitely settled in 1853, in a case to be found in Vol. 9 of Moore's Privy Council Reports, a case known as *In re Schlumbergers Patent*.

An opinion of their lordships thus given is something less than a declaratory judgment of the High Court, and yet it is something more. The scope of declaratory judgments has indeed become wider of late, and we now have it definitely laid down by the House of Lords, in 1921, in *The Russian Commercial Bank Case*, that not only is it not necessary (it never was) in such an action that the plaintiff should seek consequential relief, it is not even necessary that he should have a cause of action. All that is necessary is that there should be a real and not a fictitious question involved. But no such limitation applies to the Privy Council. His Majesty in Council may put—although he never does put—a purely fictitious question; the Governor-General of Canada in Council, in the exercise of a similar but much wider and less beneficent power under a Canadian statute, may put, and has put, purely fictitious, by which I mean purely hypothetical, questions, by way of reference, to the Supreme Court of Canada for their advisory opinion, and the opinions thus given may be, as I have pointed out in an earlier lecture, and sometimes are, the subject of an appeal to the Privy Council. In the *Labrador Boundary Case* the question submitted was, of course, in no sense either fictitious or hypothetical. I will not discuss the opinion—the report to His Majesty—delivered in that case. I will merely invite your attention to its consequences. That report will be embodied—Lord Sumner will correct me if I am wrong—in accordance with the usual practice, in an Order in Council, and it then becomes the decree or order of the final Court of Appeal. It gives judgment accordingly, and it is the duty of every subordinate tribunal to whom the Order is addressed to carry it into execution. But in this case there is no court to which it can be addressed. It cannot be addressed either to the Supreme Court of Canada, nor to the Supreme Court of Newfoundland, from neither of which did the case come, for it was not an appeal, and neither of which can execute judgment in the territory of the other. What is going to happen? This is no decree granting possession. You cannot make such an order on a government. There I leave that question—a very delicate question; and I am mindful of Bacon's words, "Stir not questions of jurisdiction."

Now there is one very important consequence to be deduced—and the Privy Council has often made the deduction—from the principle that every Dominion or colonial government is an "emanation," to adopt a word from our law reports, of the King. That consequence is that, within the scope of their legislative authority and subject to the limitations imposed by the delegation of authority to the Governor in his commission, every colonial government is invested with the prerogative. The doctrine, for example, that the Crown cannot be sued without its own consent applies to all colonial governments, although it has received remarkable statutory limitation, indeed abolition, in Australia, where the Crown has been completely assimilated, except as regards execution, to the position of an ordinary litigant before the courts, and can be sued, directly and without any petition of right, alike in contract and tort, can be compelled to submit to discovery, to pay costs, and so on—in other words, it has been compelled to renounce the privileged position it enjoys over here, a position which, from the point of view of the unfortunate British subject, may, without exaggeration, be described as "Heads I win, tails you lose," or, as a seventeenth century chief justice put it, "everything that is for the benefit of the King shall be taken largely" (in other words, widely) "as everything against the King shall be taken strictly" (in other words, narrowly). But in Australia they have changed all that. They have subdued the Crown in the courts. Take discovery, for example. Our law is, as Lord Justice Rigby once put it with characteristic bluntness, "that the Crown is entitled to full discovery as against the subject and that the subject as against the Crown is not." In other words, the Crown always goes into court with a trump card up its sleeve. But if you look at a recent Privy Council case, an appeal from New South Wales, *Jamieson* v. *Downie*, you will find their lordships laying down that, as the result of New South Wales

legislation, the Crown in New South Wales can no longer resist discovery of documents. It must satisfy the court, as the High Court of Australia itself laid down in an earlier case, that the withholding of the documents is in the public interest. Its mere *ipse dixit* won't do, and the scales of justice are no longer weighted there, as they are and have been over here for far too long, in favour of the Crown as against the subject.

And that brings me to a second principle of their lordships' decisions, and that is this: Any Colonial Legislature may, if it thinks fit, curtail the prerogative, by which I mean, of course, the prerogative within the limits of its own territorial jurisdiction. That principle is the inevitable corollary of another principle, emphasised in my first lecture, namely, that, in their lordships' view, the Colonial Legislatures are autonomous. Just as they can change the common law, so can they change, curtail, abolish the prerogative for, as Coke long ago laid down, the King hath no prerogative except that which the law allows him. Thus a colonial statute may bind the Crown, if its intention so to do is express or of necessary intendment, and the principles laid down by the House of Lords in the great *De Keyser Case* and *Cork* v. *The Food Controller* will apply just as much in regard to the prerogative, when the Dominions legislate on the lines of our Defence Act or our Companies Act, as they do over here. But nice questions may arise, and have of late arisen—when a colony proceeds, in virtue of the Colonial Laws Validity Act, to change its constitution. That Act—sometimes called the "charter" of colonial autonomy—has lately been given the widest possible interpretation by the Privy Council in *McCaulay* v. *The King*. But consider this: The Crown is an integral part of Colonial Legislatures, just as the King is an integral part of the Imperial Parliament. Now, in the provinces of Canada the Lieutenant-Governor represents the Crown, even as in the Dominion the Governor-General represents the Crown—that was long ago laid down by the Privy Council in *The Liquidators Case*, when it was held that the provincial government is the King's Government, and that, as such, the Government of New Brunswick was entitled to enforce, in its own behalf, the priority of Crown debts over the claims of other creditors in a winding-up. Supposing then, as has actually been the case, the Legislature of Manitoba, infected by the political conceptions of certain States in the great American Republic over the border, passes an Initiative and Referendum Act which provides that laws may be made and repealed by the electorate, that, for example, a legislative proposal submitted to, it might even be initiated by, the electorate, should, on a plebiscite in its favour, immediately "take effect," as the enabling statute put it, "and become law" automatically. The effect of the statute introducing this constitutional innovation was to dispense altogether with the Royal Assent, signified by the Lieutenant-Governor, to legislation. The Privy Council held that this was *ultra vires*. Why? Because the Sovereign, they declared, was and is an integral part of the Legislature. The case raises many interesting constitutional questions which I will not discuss now—among others, whether a colony could, in virtue of the Colonial Laws Validity Act, so transform its constitution as to convert the colony into a republic, a question to which my own answer would be an emphatic negative. In quite another case, *Taylor* v. *Attorney-General of Queensland*, decided by the High Court of Australia, also involving the adoption of the Referendum, but not going so far as the Manitoba Act, Mr. Justice Isaacs emphatically repudiated the idea that a Colonial Legislature could, by the exercise of its constituent powers, cut off the head of the King, if I may so put it, as the head of the Legislature. He said—and his words are significant when one bears in mind the talk in certain quarters overseas not so very long ago about "secession"—"When power is given to a Colonial Legislature to alter the constitution of the Legislature, that must be read subject to the fundamental conception that, consistently with the very nature of our constitution as an Empire, the Crown is not included in the ambit of such a power."

In other words the Colonial Legislatures cannot eliminate the Crown as a factor in legislation.

There is one aspect of the Privy Council decisions that is of great interest to a constitutional lawyer and that is the extent, the very considerable extent, to which they have taken judicial notice of responsible government in the dominions. It is the more remarkable in that the English courts have never, or hardly ever, taken such notice of such an obvious constitutional fact, with the result that the existence of responsible government in this country is, as Dicey has put it, merely a "convention." Legally speaking it does not exist, and our constitution represents a dualism—the King in Council, in other words the executive, on the one hand, and the King in Parliament, in other words the Legislature, on the other, and between the two there is a chasm bridged by what Bagehot, with his usual felicity, calls the "hyphen," the link, of the Cabinet which secures that the two act in harmony. But even so our law knows not the Cabinet, any more than it knows the Prime Minister. It knows the Privy Council, it knows the First Lord of the Treasury, but that is all. And it is a striking fact that there is not a single Dominion Constitution, except that of the new Irish Free State, which lays down, as a matter of law, that the executive shall be responsible to the Legislature. They say nothing of cabinets, nothing of prime ministers; the most they do is to *hint* at responsible government by requiring that members of the Executive Council shall, within a certain period, find seats in the Legislature. All the more remarkable is it, therefore, that the Privy Council, especially of late, have begun to take judicial notice of responsible government in the dominions. In three recent cases, one from British Columbia, another from New Zealand, the third from Newfoundland, their lordships have held; in the first case that a contract with the Crown will not be enforceable unless it can be proved that it had been authorised by the Lieutenant-Governor *in Council*, inasmuch as "the Constitution requires that the Sovereign should act on the advice of Ministers responsible to Parliament," and if one government purports to make a contract, and its successor repudiates it, and there is no evidence that the contract was ever authorised by the Governor's Council, an award, purporting to carry out the terms of the contract, cannot be enforced. In the second case, from New Zealand, it was held that money paid even under the authority of the Comptroller and Auditor-General, could be recovered by the Government if it was paid on a statutory condition which was not, in fact, fulfilled and here again English "constitutional" principles were invoked. In the third case, from Newfoundland, their lordships held that any person dealing with a colonial government must be taken to be dealing subject to such constitutional restrictions as are imposed on the Governor by the terms of his commission, whether or not they knew of such limitation. And—this was the precise point—if the House of Assembly makes it a rule—it was only a rule, not a statute—that, in all contracts creating a public charge, there shall be inserted a condition that the contract shall not be binding until approved by a resolution of the House, well then, if the government makes such a contract with a cable company, the agreement, if not approved by the Legislature, is not enforceable, and the cable company has no remedy. And you will find the principle of the ministerial discretion reposed in responsible ministers laid down in an Australian appeal: *Theodore* v. *Duncan*. The Australian High Court has taken due note of these decisions and in a recent case, the *Commonwealth* v. *Colonial Spinning Company*, Mr. Justice Isaacs, on the authority of one of them, *Mackay* v. *The Attorney-General of British Columbia*, laid down that "so far as any agreement purports to bind the Government to pay to a company a remuneration for manufacturing wool 'tops,' it is an appropriation of public revenue and, being without legislative authority, is void." That is an

interesting example of how the High Court of a great Dominion, long after the right of appeal in constitutional cases to the Privy Council has been largely cut off, still goes to school to their lordships for its constitutional law. Still more remarkable is it as an example of the unity of law throughout the Empire where the principles of constitutional law are concerned.

(*To be continued.*)

Court of Appeal.

No. 1.

In re **Freeman** and *In re* **The Law of Property Act, 1925.**

20th December, 1926 ; 17th January, 1927.

LUNACY—PROPERTY OF LUNATIC—POWER OF COURT TO DIRECT SETTLEMENT—APPLICATION BY NEXT-OF-KIN—ALTERATION OF LAW DEFEATING EXPECTATIONS—"ANY PERSON MIGHT SUFFER AN INJUSTICE"—CHANGE OF CIRCUMSTANCES—LAW OF PROPERTY ACT, 1925 (15 Geo. 5, c. 20), s. 171—ADMINISTRATION OF ESTATES ACT, 1925 (15 Geo. 5, c. 23), s. 46 (1) (v).

Under s. 171 *of the Law of Property Act*, 1925, *the court has power to direct a settlement to be made of the property of a lunatic or defective in certain cases, including* (c) *where by reason of any change in the law of intestacy or of any change in circumstances since the execution by the lunatic or defective of a testamentary disposition . . . or for any other special reason the court is satisfied that any person might suffer an injustice if the property were allowed to devolve as undisposed of on the death intestate of the lunatic or defective, or under any testamentary disposition made by him. A.F., a spinster aged eighty-one, had been a lunatic since* 1882, *and was possessed of personal property of the value of about* £2,000. *She had been provided for by an uncle and aunt during their lives, and the aunt left by her will an annuity of* £300 *for her support. The patient made a will before she became insane, giving her property to her three sisters, who all predeceased her. Her nearest living relatives who were second cousins and the residuary legatees of her aunt, applied to the court to exercise its power to make a settlement of the lunatic's property on them, on the ground that if she died intestate, they would suffer an injustice, as the estate would now go as* bona vacantia *to the Crown under the Administration of Estates Act*, 1925, *s.* 46, *s-s.* (1) (v).

Held, that construing the expression "suffer an injustice" widely, as importing a grievance and unfairness caused by a change of the law, the court looking to see what disposition the lunatic would probably make of her property if sane, would direct a settlement of the fund on the applicants to be approved by the Judge in Lunacy, and subject to the right of the lunatic to be maintained out of the income for the rest of her life.

Application to the Judge in Lunacy, referred to the full Court of Appeal as being the first case under s. 171. The facts are sufficiently stated in the above head-note. The application was opposed by the Crown, for whom the Solicitor-General argued that the mere alteration of the law defining any persons such as second cousins of a right to share in the distribution of the estate of a lunatic who died intestate was not a special circumstance showing that those persons would suffer an injustice. *Cur. adv. vult.*

LORD HANWORTH, M.R., stated the facts, and read s. 171 of the Law of Property Act. He thought it was impossible to construe the words "might suffer an injustice" strictly, for one of the occasions on which the intervention of the court was possible was a change in the law, and upon such a change being made, injustice necessarily ceased. Therefore "injustice" must be construed in a wider sense, as connoting unfairness and importing a sense of grievance. Here too there had been a "change in circumstances" since the execution by the lunatic of a testamentary disposition," for her three sisters, to whom she left her property by will, had all passed away. Clause (*c*) of the sub-section appeared to be a transitory provision, for the change of law would become remote as time passed. The test which the court ought to apply was stated by Fry, L.J., in *Re Darling*, 39 Ch.D. 208, as follows : "The judge has to see what it is likely the lunatic would do himself, if sane." Applying that rule, he (his lordship) was satisfied that, if sane, the patient would have made some effective disposition of her property in favour of her nearest relatives that remained who had stood by her. But it was not possible or wise to attempt an exhaustive exposition of the section, or to lay down definite rules on which the court would act under it. Each case must be considered on its own facts. It was sufficient to say that in the present case the applicants had made out a case for a direction to be given by the court. There was no desire on their part to exclude any maternal relations of the same degree. The order would be as indicated by Sargant, L.J.

SARGANT, L.J. and LAURENCE, L.J., delivered judgment to the same effect, the former observing that the meaning of the words "suffer an injustice" must include the destruction of a clear moral claim, or even the disappointment of a legitimate and well-founded expectation.

COUNSEL : *Topham*, K.C., and *C. A. J. Bonner ; Sir Thomas Inskip*, K.C. (Solicitor-General) ; and *Dighton Pollock.*

SOLICITORS : *Kendall, Price & Francis ; The Treasury Solicitor.*

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Clerical Disabilities Act, 1870, *In re*: **L. S. A. Cowan,** *ex parte.*

Eve, J. 11th March.

ECCLESIASTICAL LAW—CHURCH OF ENGLAND—RELINQUISHMENT OF OFFICE BY PRIEST—INROLLED DEED—VACATING INROLMENT—CLERICAL DISABILITIES ACT, 1870 (33 & 34 Vict., c. 91), ss. 1, 4.

A clergyman of the Church of England, being desirous of relinquishing his office, executed and inrolled a deed of relinquishment under the Clerical Disabilities Act, 1870, *but after six months he abandoned the intention and desired to remain in holy orders.*

Held, that the inrolment might be vacated.

This was an *ex parte* motion on behalf of L. S. A. Cowan, for an order vacating the inrolment of a deed poll, dated 8th July, 1926, and inrolled on the following day. The applicant was admitted a priest in the Church of England in 1902, but, apart from a poor law chaplaincy, he had never had a cure of souls. In 1926 he made up his mind to abandon holy orders and executed a deed in pursuance of the Clerical Disabilities Act, 1870, which he caused to be inrolled in the Central Office of the High Court. By the Act it was provided that, at the expiration of six months after an office copy of the deed had been delivered to the bishop of the diocese, the bishop should, on the application of the person executing the deed, cause the same to be recorded in the diocesan registry, and thereupon, but not sooner, the person executing the deed should be incapable of acting as a minister of the Church of England—an office copy was duly sent to the bishop, but the deed had not been recorded in the diocesan registry. After the six months had elapsed he reconsidered the matter, and desired to remain in holy orders. In these circumstances he applied to the diocesan registry, but as the deed had not been recorded there he was advised that he ought to apply to the court to vacate the inrolment. The only reported case seemed to be *Re a Clergyman*, 1872, L.R. 15 Eq. 154, where the inrolment was vacated under similar circumstances.

EVE, J., said the case cited was sufficient authority to enable him to make the order vacating the inrolment of the deed.

COUNSEL: *Arthur May.*

SOLICITORS: *Harvey Clifton*, for *Plumbridge & Meaden*, Brighton.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division

James *v.* British General Insurance Co., Ltd.

Roche, J. 22nd March.

INSURANCE — MOTOR CAR — THIRD PARTY RISKS — POLICY HOLDER CONVICTED OF MANSLAUGHTER—NOT PREVENTED FROM RECOVERING UNDER POLICY—QUESTION OF PUBLIC POLICY—INTENTION—NEGLIGENCE.

A motor insurance policy holder while drunk and driving his motor car was involved in a collision with a motor-bicycle which resulted in the death of one man and injuries to another. In an action the injured man recovered damages from the policy holder who was later convicted at assizes of manslaughter and sentenced to twelve months' imprisonment. A claim by the policy holder under the policy was upheld despite the contention that it was contrary to public policy that he should be indemnified against the consequences of a criminal act. It was held that there was no express intention to commit a crime.

On the 3rd June, 1925, the plaintiff, Frank Courtney James, while in a state of drunkenness was driving a motor car when he collided with a motor-bicycle driven by an army subaltern named Shadwell who was carrying as a passenger another subaltern named Tait. As a result of the collision Tait was killed and Shadwell injured. In an action brought against the present plaintiff Shadwell recovered £1,500 and costs amounting to £182 7s. 7d.; the present plaintiff also incurred costs in defending the action, in attending the inquest on Tait, the police court proceedings and the Devizes assizes where he was tried and convicted of the manslaughter of Tait and sentenced to twelve months' imprisonment. The cost of repairing the damage to the motor car and motor-bicycle also amounted to over £80. The plaintiff in this action now claimed on an insurance policy issued by the defendant company to be indemnified by them in respect of the pecuniary loss suffered by him as a result of the accident. The defendants submitted that they were not liable since the plaintiff was drunk at the time of the accident and was so driving to the danger of the public that when tried he was convicted of manslaughter. He was committing a criminal act, and if and so far as the policy constituted an indemnity to the plaintiff against the consequences of his criminal act it was contrary to public policy and was void. The defendants further submitted that the risk borne by them was increased by the plaintiff's condition, and also alleged that in the proposal form the plaintiff had falsely stated that he was free from physical defect, and had omitted to state that the car was the property of his father. Counsel for the plaintiff said that there would have been no question of the plaintiff's right to recover if a man had not been killed, and referred to the case of *Tinline* v. *White Cross Insurance Company*, 1921, 3 K.B. 327; in which Bailhache, J., said that the fact that there was negligence or even gross negligence did not prevent an assured person from recovering on the grounds of public policy or on any grounds. Counsel submitted that whether the driver was drunk or not was immaterial, he also referred to plaintiff's alleged physical defect, and to the exact ownership of the car which he contended was also immaterial. Counsel for the defendants submitted that for the plaintiff to recover an indemnity against the consequences of his criminal act would be contrary to public policy; that it was wilful misconduct for a man to get drunk when about to drive a car. His lordship here raised a question where the line was to be drawn between a crime which deprived a man of his right to recover and one which did not, and asked if it was not a question of intention. Counsel for the defendants then submitted that to get drunk was an intentional act. His lordship said he thought that it was contrary to public policy that a man should be indemnified against the consequences of a crime which he had intentionally committed, but thought that it would be altogether contrary to public policy to hold that a man could not cover by insurance his liability to third persons arising out of dangerous driving. Counsel for the plaintiff submitted that he was seeking indemnity against a civil liability arising out of an act which had a double aspect, and not an indemnity against the consequences of a criminal act. During the hearing evidence was called of ownership of the car, and the plaintiff's physical condition.

ROCHE, J., giving judgment referred to the facts of the case, to the insurance policy, and to the previous action against the present plaintiff with its resulting pecuniary loss to him which he would be unable to meet unless successful in this action. He also referred to the conviction of manslaughter and the sentence of twelve months' imprisonment, and said that the charge of unlawfully wounding Shadwell was not proceeded with so that there was no actual conviction in respect of the subject-matter of this action. His lordship found as facts: (1) that the plaintiff was the owner of the car; (2) that the plaintiff was free from physical defect at the time of the proposal; and (3) that the item of £252 5s. claimed for the costs of the defence at the assizes was not recoverable under the terms of the policy. Dealing with the defendant's contention that inasmuch as the plaintiff was guilty of a crime it was against public policy that he should be indemnified by his insurers his lordship said that if that contention was right it cut at the root of a very large number of motor insurances. The principle, if applicable at all, was applicable to all persons driving to the public danger, there could be no half-way house. Further, the principle would extend beyond motor insurance. Referring to the judgment in the case of *Tinline* v. *White Cross Insurance Co.*, his lordship said that it dealt with the very point now in dispute, and although it had been sought to do so, he was unable to distinguish it from the present case. He also cited the following passage from the judgment of Kennedy, J., in *Burrows* v. *Rhodes and Another*, 43 SOL. J. 351; 1899, 1 Q.B., 816, at p. 828: "It has, I think, long been settled law that if an act is manifestly unlawful, or the doer of it knows it to be unlawful, as constituting either a civil wrong or a criminal offence, he cannot maintain an action for contribution or for indemnity against the liability which results to him therefrom. An express promise of indemnity to him for the commission of such act is void." In the present case the act which brought about the criminal liability was a negligent one; it was not a wilful doing of the act by which the doer injured or killed the other persons. He was not prepared to hold that in the case of negligence there was such a degree of criminality as made it contrary to public policy that the plaintiff should recover. The effect of holding that the plaintiff could not recover would be that in no case in which a person was driving to the public danger would he be able to rely on his insurance. His lordship found on the facts that the plaintiff did not deliberately get into a condition of drunkenness and in that condition drive the car, he did so through folly. Judgment was given for the plaintiff for £1,857 4s. 11d.

COUNSEL: For the plaintiff, *H. du Parcq.*, K.C., and *G. Malcolm Hilbery*; for the defendants, *F. Barrington-Ward*, K.C., and *R. T. Monier-Williams.*

SOLICITORS: *Blundell, Baker and Co.*, for *J. M. B. Turner and Co.*, Bournemouth; *Clifford Turner* and *Hopton.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Societies.

The Selden Society.

LORD CAVE ON THE VALUE OF RECENT PUBLICATIONS.

The Lord Chancellor presided at the annual general meeting of the Selden Society, which was held on Monday evening last in the Council Room, Lincoln's Inn Hall. In moving the adoption of the report and accounts, he referred to their satisfactory nature, and expressed a wish that the membership should increase more rapidly. There were now 472 members. Of the greatest importance was the fact that the Society's publications had been brought up to date. Vol. IX of the Year Books of Edward II, edited by Mr. G. J. Turner, had been issued, as also had the publication of 1926, Vol. XIV, Pt. 2, of the Year Book series by Mr. W. C. Bolland, being Vol. 43 of the Society's publications. The council also had in the press the "*Liber Pauperum* of Vicarius, edited by Professor de Zulueta, which would be issued to members about the middle of this year. The council considered this to be an important volume, which should be of especial value to the student of English and Roman Law. They also had in the press, as an extra volume, a new edition of Selden's "Table Talk," based on a specially good MS. belonging to Lincoln's Inn, together with Sir E. Fry's account of Selden. The volume had been edited by Sir Frederick Pollock, K.C., the Literary Director.

Lord Cave went on to say that the Society was performing a useful and, indeed, indispensable function. Many of these most interesting books were either in MS. or in print which was difficult to decipher, and very few copies of them existed. It was to the benefit of the whole legal profession throughout the world that they should obtain the safety of printing and appear in the volumes issued by the Society. The Year Books had been called "our glory," and he endorsed every word of the last paragraph of the article on the subject which appeared in *The Times Literary Supplement* of 10th February last, where the writer said :—

> "No praise can be too high for the scholarly manner in which the Year Books are being edited. If the Selden Society had more funds it could do more work. To say that it merits the unstinted support of both branches of the legal profession is a poor tribute. Its activities deserve a far wider public."

Sir Frederick Pollock, in seconding the motion, which was carried, referred to correspondence which had recently appeared in *The Times Literary Supplement*.

Mr. Justice Sankey was elected a vice-president of the Society, and the officers were thanked for their services.

Lord Cave, in proposing a vote of thanks to the Master of the Rolls (Lord Hanworth) for having acted as vice-president for three years, said that they all sympathised with the efforts he was making to put his hand upon the manorial rolls throughout the country and to place them in safe custody. He was doing a great service to future historians.

Lord Hanworth, in responding, said that the work they were doing at the Record Office was being effectively carried out, and those who had read his letter in *The Times* on Friday would see that they had been working very hard to that end. They had been very much encouraged by the way in which they had secured the co-operation of persons who were interested in the preservation of historical documents. They had quickened an interest throughout the country in a manner that had surprised him, and now they had a prospect of centres in every county where such documents could be preserved and made available for inspection.

Association of County Court Registrars.

ANNUAL MEETING.

The annual meeting of this society was held at The Law Society's Hall, on Friday, the 25th ult., the President, Mr. A. O. Jennings, M.B.E. (Brighton) occupying the chair. There were also present Messrs. R. Pybus (Gateshead), Vice-President, J. E. Daw, Vice-President and Hon. Secretary (Exeter), T. P. Charles (Swansea) C. E. Lamb (Kettering), C. E. Neild (Liverpool), H. H. Payne (Portsmouth), G. Shilton (West London), F. F. Smith (Rochester), Members of the Council; R. H. Beaumont (Nottingham), P. N. Binns (Bedford), J. H. Brooks (Hyde), A. H. Canham (Sudbury), A. L. Carless (Llandrindod Wells), W. L. Dell (Mayor's and City of London Court), R. Farmer (Chester), T. Lamb (Southend), A. L. Lowe, C.B.E. (Birmingham), A. D. Minton-Senhouse (Newcastle-on-Tyne), W. O. Times (Hitchin), E. E. Tweed (Lincoln) and H. Winnett (Gravesend).

The report referred to the new rules enabling divorce proceedings in "poor persons'" cases to be carried on in certain district registries, and required the attendance of the registrar at Assizes. The committee had informed the department that at present they were unable to form any satisfactory estimate of the demands this new jurisdiction made on the time of registrars and their staffs, and they reserved the right to make representations on the subject as soon as they were in a position to do so. The committee in view of the attitude of the department, where loss had been incurred owing to negligence or dishonesty of clerks or bailiffs, had issued a circular to members pointing out that any failure in the strictest supervision by registrars was liable to be regarded as a "personal default." They repeated that in such a case the registrar had a right of appeal to the Lord Chancellor. In view of recent legislation, the limit of three months for the duration of the appointment of a deputy district registrar no longer existed. The proposed arrangement for the future was that district registrars should appoint a deputy for six months after obtaining the Lord Chancellor's approval, and should at the end of that time submit to the Lord Chancellor a statement showing the occasions on which the deputy had acted and application for approval of a re-appointment for the next six months. The tendency continued for the importance of the work done in county courts to grow. The policy of the department to group courts was no doubt partly due to the desire to establish whole-time registrars where possible, but also partly to economy. Where courts were at inconvenient distances, it might be questioned whether such economies were justified in view of the possible injury to the interests of suitors.

The PRESIDENT moved the adoption of the report, observing that the Adoption of Children Act was likely to give registrars considerable trouble, as they would have to advise many of those who adopted children under its provisions. The Legitimacy Act would probably be the cause of even greater trouble. The Act came into operation on the 1st January last, but no rules had at present been issued, so that there had been considerable difficulty in respect to its working. The rules of the 26th July, permitting an enlargement of the time for signing, judgment and other matters, were also likely to make great demands on the time of the registrars. With regard to the liability of registrars for the defaults of their subordinates, it appeared to him that the obvious course was for the registrars to insure against such losses. The Committee had made enquiry, and were informed that the insurance companies were prepared to accept the liability.

Mr. DAW seconded. He said that in spite of the fact that last year the annual subscription had been reduced from one to half a guinea, the Association had contrived to live, it might be said, within its income, and it had only exceeded it by £10.

In the course of the discussion which ensued, a general expression of opinion was given that recent legislation, such as the Adoption of Children Act and the Legitimacy Act threw a great burden of extra work upon the registrars and their staffs, and that it was of such a nature that it could only be undertaken by their more efficient clerks. This all meant extra expense in the conduct of their work, and ought to be considered in regard to their remuneration.

The PRESIDENT said he quite agreed that the courts were being starved, and the Committee had been doing their best to press the matter on the notice of the authorities. The Treasury were, however, desirous that no more money should be spent than could be helped.

The report was unanimously adopted.

The following elections were made: Mr. Jennings, President; Mr. Pybus and Mr. Daw, Vice-Presidents; Messrs. F. P. Charles, Mr. F. W. Cook and Mr. R. Farmer, Council. Regret was expressed that Mr. Daw, who was retiring from practice, would relinquish the office of Hon. Secretary. He had, however, consented to continue to hold it during the ensuing year.

United Law Society.

A meeting of the Society was held in the Middle Temple Common Room on Monday, 28th March, Mr. L. F. Stemp in the chair. Miss C. M. Beatty opened: "That this House would support any Bill that would give women equal Parliamentary voting rights with men." Mr. J. H. G. Buller opposed. There also spoke Messrs. S. E. Redfern, E. H. Pearce, I. E. Harper, P. Pitt, N. Tebbutt, G. B. Burke and J. MacMillan. The opener having replied, the motion was put to the House, but was lost by four votes.

The attention of the Legal Profession is called to the fact that the PHŒNIX ASSURANCE COMPANY Ltd., Phœnix House, King William Street, London, E.C.4 (transacting ALL CLASSES OF INSURANCE BUSINESS) invites proposals for Fidelity Guarantee and Court Bonds, Loans on Reversions and Life Interests. Branch Offices at Byron House, 7, St. James's Street, S.W.1; 187, Fleet Street, E.C.4; 20-22, Lincoln's Inn Fields, W.C.2; and throughout the country.

Law Students' Journal.

Wakefield and District Law Students' Society.

At the meeting of the above Society held on the 9th ult., Mr. F. J. S. Watts, LL.B., in the chair, the following subject was debated: "Jones owned a dog which to his knowledge was in the habit of attacking the dogs of Robinson and Brown, and which had at least once attacked mankind. One day the dogs of Brown and Robinson were proceeding peacefully on the highway when they were attacked by the Jones dog, which severely bit Brown's dog. In the excitement of the moment Brown's dog bit Robinson's dog, and the latter promptly bit Smith, a passer-by. Can Smith successfully sue—(1) Jones? (2) Brown? (3) Robinson?" Mr. H. Partington opened for the affirmative and Mr. P. B. Thomas replied for the negative. The following members also spoke: Miss Barker and Messrs. J. L. J. Burton, A. A. Collins, C. Craven, A. B. Fox and H. Hall. After the leaders had replied the Chairman summed up and the voting was in favour of the negative in Cases (2) and (3) by six votes to two, and in Case (1) there was an equality of voting, and the Chairman exercised his casting vote for the negative.

At the meeting of the above society held on the 16th ult., Mr. H. R. Turner in the chair, Mr. G. E. D. Warmington, Registrar of the West Riding Deeds Registry, delivered a lecture on "Registration in Yorkshire under the Yorkshire Registry Acts and the New Law." The lecturer gave a brief summary of the history of registration in Yorkshire, and then dealt at length with the changes made by the new property legislation. Finally, Mr. Warmington discussed several knotty points which have arisen under the new law with the members present. The meeting concluded with a hearty vote of thanks to the lecturer, proposed by Mr. C. Craven and seconded by Mr. A. B. Fox.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Hall, on Tuesday, the 22nd ult. (Chairman Mr. W. S. Jones), the subject for debate was: "That in the opinion of this House the case of *In re Stephen-Tomalin*, 1927, 1 Ch. 1, was wrongly decided." Mr. M. C. Batten opened in the affirmative. Mr. J. Whyatt seconded in the affirmative. Mr. J. H. E. Buller opened in the negative. Mr. E. V. Miles seconded in the negative. The following members also spoke: Messrs. Morris and Fletcher. The opener having replied, and the Chairman having summed up, the motion was lost by one vote. There were nineteen members and two visitors present.

At a meeting of the society held at the Law Society's Hall, on Tuesday, 29th ult., (Chairman, Mr. H. Shanly) the subject for debate was: "That all religions have been evolved by man and their basis has always been fear." Mr. John F. Chadwick opened in the affirmative, Mr. J. G. S. Tompkins opened in the negative. The following members also spoke: Messrs. V. R. Aronson, J. H. G. Buller, E. G. M. Fletcher, G. Higgs, C. G. Salinger, U. Prasada, E. D. Syson, R. D. C. Graham, W. S. Jones, H. Malone. The opener having replied, the motion was lost by sixteen votes. There were thirty-seven members and four visitors present.

Legal Notes and News.

Appointments.

The King has been pleased to appoint CHETTUR MADHAVAN NAYAR, Esq., Barrister-at-Law and Advocate-General for the Presidency of Madras, to be one of the Judges of the High Court of Judicature in Madras, in the place of the late Sir Cheruvari Krishnan, Diwan Bahadur.

Mr. JOSEPH DAVIES, the senior member of the firm of Messrs. Joseph Davies & Son, Solicitors and Notaries Public, Aberystwyth, has been appointed by the Council of the Law Society as their representative on the Legal Advisory Committee of the University College of Wales, Aberystwyth, now being formed. Mr. Davies was admitted in 1881, and held the offices of Registrar of Aberystwyth Admiralty, Bankruptcy and County Courts and District Registrar of the High Court of Justice from 1881 to 1920 when he retired. In 1913 he was appointed Chairman of the Court of Referees under the Unemployment Insurance Acts, for the Mid-Wales District, an office which he still holds. Mr. Davies was admitted in 1881.

Professional Partnerships Dissolved.

JAMES FREDERICK HAYNES ATKEY and GEOFFREY RAMSAY GOLDINGHAM, solicitors, 12, Park-place, St. James's-street, as from 17th March, by mutual consent. Mr. Atkey will carry on the practice of the existing firm of Atkey & Son. Mr. Goldingham will practice independently at 9, Southampton-street, Bloomsbury-square.

ELLIS WILLIAM DAVIES and JOHN ROBERTS, solicitors, 8, Ely-place, Holborn (Jaques & Co.), by mutual consent as from 31st December, 1926.

JOHN FISH SYMONDS and GODFREY CLIFFORD LEATHER (J. F. Symonds & Leather), Cambridge, solicitors, as from 13th March. In future the business will be carried on by G. C. Leather alone.

BERTRAM CLARKE NEWBOLD and HORACE BAILEY CHAPMAN, solicitors, Burton-upon-Trent (J. & W. J. Drewry & Newbold), by mutual consent as from 1st March, the said H. B. Chapman having secured a municipal appointment. B. C. Newbold will continue to carry on practice under the style of J. & W. J. Drewry & Newbold.

Wills and Bequests.

The Rt. Hon. Sir Ellis Jones Ellis Griffith, Bt., P.C., K.C. LL.B., of New Court, Middle Temple, E.C., of Ty-Coch, Brynsiencyn, Anglesey, and of Buckingham Palace-mansions, S.W., Under-Secretary for the Home Department 1912–15, Recorder of Birkenhead 1907–12, lately a director of the Mond Nickel Company, Limited, who died on 29th November, aged sixty-six, left estate of the gross value of £10,884. His will is made in his own hand on House of Commons paper, dated 17th December, 1923. Like many other prominent lawyers he was unable to make his own will correctly, and an affidavit of due execution with reference to various alterations and interlineations was required before the will could be admitted to probate. He left £150 to his clerk, E. G. Archer, and he expressed the desire that his wife and son should help his said clerk and remember him when they should make their own wills, and £50 to Blanche Richardson.

Sir Edward Henry Busk, M.A., LL.B., of Heath End, Checkendon (near Reading), formerly in business as a solicitor, lately chairman of the London Board of the London and Lancashire Insurance Co. Limited, formerly Vice-Chancellor of the University of London, a former Prime Warden of the Fishmongers Company, who died on 29th October, aged eighty-two, left estate of the gross value of £50,743.

Mr. William Henry Stewart, solicitor, Bournemouth, late of Wakefield, left estate of the gross value of £14,545.

BETTING OVERSEAS.

The text is issued of the Bill introduced by the Chancellor of the Exchequer to "prohibit the making with bookmakers of bets on events to be determined in Great Britain unless the bets are made in Great Britain." Appended are the terms of the operating clause:—

1. With a view to preventing the evasion of the betting duty, it is hereby enacted that it shall not be lawful for any person in Great Britain to make or offer to make with a bookmaker a bet on an event to be determined in Great Britain unless the bet is made or to be made in Great Britain, and for the purpose of this Act a bet shall be deemed not to be made in Great Britain if, in the case of a bookmaker who carries on business both within and without Great Britain, it is made with a branch of the business outside Great Britain.

2. If any person acts in contravention of this Act he shall be liable in respect of each offence to an excise penalty of £100.

In ordering new garments people will be well advised to stipulate that they should have COURTAULDS' LININGS. These fabrics are made to match perfectly every-day Suits, Courtly Evening Dress, Trim Rain Coats, Sturdy Tweeds and Overcoats. They are guaranteed in quality, are exceptionally durable, will not discolour, or grow shabby, and should it be necessary to send the garment to be cleaned, this can be done without any risk. Further, COURTAULDS' LININGS enable the wearer to slip the clothes on or off very easily, besides giving a pleasant feeling of comfort and ease, and do full justice to the tailor who is proud of his work. If our readers experience any difficulty in obtaining COURTAULDS' LININGS, they could not do better than write direct to the Manufacturers, Messrs. COURTAULDS LTD., Dept. 137M, 16, St. Martin's-le-Grand, London, E.C.1.

BANKRUPTCY LAW IN ULSTER.

Important changes in the Ulster bankruptcy laws are recommended in the report of the Departmental Committee set up by the Northern Ireland Ministry of Commerce.

After enumerating the various enactments governing bankruptcy and arrangement matters, the report states that in England the law on insolvency relating both to bankruptcy and to arrangements was revised and consolidated in 1913 and 1914, and further amended by the Bankruptcy Act, 1926. The Committee are unanimously of opinion that a comprehensive scheme of consolidation by re-enactment on these lines should be undertaken in Northern Ireland without delay. Pending complete revision they recommend that immediate legislative effect should be given to certain recommendations which they put forward. These include that fraudulent preference and a return of no goods by the sheriff should be declared acts of bankruptcy; that a debtor departing or remaining out of Northern Ireland with intent to defeat or delay creditors be an act of bankruptcy; and that a deed of assignment outside the court to which a debtor has secured the assent of three-fifths in number and value of his creditors should not be regarded as an act of bankruptcy, but should be binding on all creditors subject to confirmation by the court. They also recommend that a married woman who carries on a trade or business should be liable to a debtor's summons and to bankruptcy whether that business is carried on separately from her husband or not, and that in bankruptcy the right of husband or wife to dividend in respect of assets lent to his or her spouse should be postponed to the claims of other creditors. Other recommendations are that it be made an offence for traders becoming bankrupt not to have kept books of account, and a misdemeanour for an undischarged bankrupt to obtain credit to the extent of £10 or upwards without disclosing his previous bankruptcy; that the Crown should not enjoy a greater measure of priority than is the case in England in the matter of income tax and other Crown debts; and that the priority hitherto enjoyed by employés of a bankrupt as to payment of salary be extended to his commission. The extension to Northern Ireland of the provisions of the English Act in relation to gambling and rash speculation by bankrupts is suggested, as well as the adoption of the English scale of fees for accountants in administration of debtors' affairs.

STATUTE OF LIMITATIONS.

In a case before Mr. Justice Sankey, in the High Court, a defendant pleaded the Statute of Frauds.

The judge asked if there was any substance in the plea.

Counsel said he did not think there was.

The Judge: When I was at the Bar my pleading master said, "Always plead the Statute of Limitations." I always did, but once I went too far, because I pleaded it in a divorce action.

CHARTERED INSTITUTE OF SECRETARIES.

Preliminary, Intermediate and Final Examinations for Chartered Secretaries will be held on the 17th and 18th June, in London, Birmingham, Bradford, Bristol, Cardiff, Hull, Manchester, Newcastle, Nottingham, Glasgow, Belfast, and Dublin. Entries close on the 17th May. Particulars may be obtained from the Institute, London Wall, London, E.C.2.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Romer.
Monday April 4	Mr. Jolly	Mr. Bloxam	Mr. Jolly	Mr. More
Tuesday .. 5	More	Hicks Beach	More	Jolly
Wednesday . 6	Synge	Jolly	Jolly	More
Thursday .. 7	Ritchie	More	More	Jolly
Friday .. 8	Bloxam	Synge	Jolly	More
Saturday .. 9	Hicks Beach	Ritchie	More	Jolly

Date.	Mr. Justice Astbury.	Mr. Justice Clauson.	Mr. Justice Russell.	Mr. Justice Tomlin.
Monday April 4	Mr. Hicks Beach	Mr. Bloxam	Mr. Synge	Mr. Ritchie
Tuesday .. 5	Bloxam	Hicks Beach	Ritchie	Synge
Wednesday . 6	Hicks Beach	Bloxam	Synge	Ritchie
Thursday .. 7	Bloxam	Hicks Beach	Ritchie	Synge
Friday .. 8	Hicks Beach	Bloxam	Synge	Ritchie
Saturday .. 9	Bloxam	Hicks Beach	Ritchie	Synge

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-à-brac a speciality.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 5%. Next London Stock Exchange Settlement, Thursday, 7th April, 1927.

	Middle Price 30th Mar.	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	85½	4 13 6	—
Consols 2½%	54½	4 11 6	—
War Loan 5% 1929-47	101⅞	4 18 6	4 19 6
War Loan 4½% 1925-45	95⅞	4 14 0	4 17 6
War Loan 4% (Tax free) 1929-42	99⅞	4 0 0	4 0 0
War Loan 3½% 1st March 1928	99	3 11 0	4 12 0
Funding 4% Loan 1960-90	86¼	4 13 0	4 14 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	91¼	4 7 6	4 10 0
Conversion 4½% Loan 1940-44	95⅞	4 14 0	4 17 6
Conversion 3½% Loan 1961	75 1/16	4 13 0	—
Local Loans 3% Stock 1921 or after	63	4 15 6	—
Bank Stock	248½	4 16 6	—
India 4½% 1950-55	91⅛	4 19 0	5 2 6
India 3½%	68¼	5 2 6	—
India 3%	59¼	5 1 0	—
Sudan 4½% 1939-73	94	4 16 0	4 19 0
Sudan 4% 1974	84	4 15 0	4 18 0
Transvaal Government 5% Guaranteed 1923-53 (Estimated life 19 years)	81½	3 14 0	4 12 0
Colonial Securities.			
Canada 3% 1938	84¼	3 11 6	4 18 0
Cape of Good Hope 4% 1916-36	91½	4 7 6	5 2 0
Cape of Good Hope 3½% 1929-49	79½	4 8 0	5 1 0
Commonwealth of Australia 5% 1945-75	100½	4 19 6	5 0 0
Gold Coast 4½% 1956	95	4 15 6	4 17 6
Jamaica 4½% 1941-71	90	5 0 0	5 1 0
Natal 4% 1937	92	4 7 0	5 0 0
New South Wales 4½% 1935-45	87½	5 3 0	5 11 6
New South Wales 5% 1945-65	96	5 4 0	5 6 6
New Zealand 4½% 1945	95	4 15 0	4 18 6
New Zealand 4% 1929	98⅞	4 1 0	5 0 6
Queensland 5% 1940-60	96¼	5 4 0	5 6 0
South Africa 5% 1945-75	101⅞	4 18 6	4 19 6
S. Australia 5% 1945-75	98½	5 1 6	5 2 6
Tasmania 5% 1932-42	100½	4 19 6	5 1 0
Victoria 5% 1945-75	100½	5 0 0	5 1 0
W. Australia 5% 1945-75	99¼	5 0 6	5 2 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corpn.	62¾	4 16 0	—
Birmingham 5% 1946-56	101¼	4 19 0	5 0 0
Cardiff 5% 1945-65	100¼	4 19 6	5 0 0
Croydon 3% 1940-60	68¾	4 7 6	5 0 0
Hull 3½% 1925-55	78¼	4 10 0	5 0 0
Liverpool 3½% on or after 1942 at option of Corpn.	72¾	4 17 0	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	51½	4 17 0	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	62¼	4 16 0	—
Manchester 3% on or after 1941	62¾	4 15 6	—
Metropolitan Water Board 3% 'A' 1963-2003	63	4 14 6	4 16 0
Metropolitan Water Board 3% 'B' 1934-2003	64	4 13 6	4 15 0
Middlesex C. C. 3½% 1927-47	81½	4 6 0	4 18 0
Newcastle 3½% irredeemable	71¼	4 18 6	—
Nottingham 3% irredeemable	62½	4 17 6	—
Stockton 5% 1946-66	100½	4 19 6	4 19 6
Wolverhampton 5% 1946-56	100	5 0 0	5 0 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	80½	4 19 6	—
Gt. Western Rly. 5% Rent Charge	98½	5 1 6	—
Gt. Western Rly. 5% Preference	92½	5 8 0	—
L. North Eastern Rly. 4% Debenture	74½	5 7 6	—
L. North Eastern Rly. 4% Guaranteed	70½	5 13 6	—
L. North Eastern Rly.4% 1st Preference	64	6 5 0	—
L. Mid. & Scot. Rly. 4% Debenture	78½	5 2 0	—
L. Mid. & Scot. Rly. 4% Guaranteed	75½	5 6 0	—
L Mid. & Scot. Rly. 4% Preference	70½	5 13 6	—
Southern Railway 4% Debenture	79½	5 0 6	—
Southern Railway 5% Guaranteed	97	5 3 0	—
Southern Railway 5% Preference	91½	5 9 0	—

Continued from page xiv.

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